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In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law,[1] and the legislature is not to be presumed to have done a vain or futile thing in the enactment of a statute.[2] Thus, it is a general principle that the courts should, if reasonably possible to do so,[3] interpret the statute or the provision being construed so as to give it efficient[4] operation and effect[5] as a whole.[6] A court is not at liberty to rewrite a statute to reflect a meaning it deems more desirable; rather, it must give effect to the text Congress enacted.[7] A court will not interpret a statute in such a way as to make a nullity of its provisions if a sensible construction is available.[8] If a statute is fairly susceptible of two constructions, one of which will give effect to the act while the other will defeat it, the former construction is preferred.[9] Furthermore, one part of a statute may not be construed so as to render another part nugatory or of no effect.[10] Also, notwithstanding the general rule against the enlargement or extension of a statute by construction,[11] the meaning of a statute may be extended beyond the precise words used in the law, and words or phrases may be altered or supplied, where this is necessary to prevent a law from becoming a nullity.[12] Wherever the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by implication.[13]

CUMULATIVE SUPPLEMENT

Cases:

A court should not lightly conclude that Congress enacted a self-defeating statute. Quarles v. United States, 139 S. Ct. 1872 (2019).

The Supreme Court is obliged to give effect, if possible, to every word Congress used in a statute. National Ass'n of Mfrs. v. Department of Defense, 138 S. Ct. 617 (2018).

No legislation pursues its purposes at all costs. CTS Corp. v. Waldburger, 134 S. Ct. 2175 (2014).

[END OF SUPPLEMENT]

Footnotes

1 Amsel v. Brooks, 141 Conn. 288, 106 A.2d 152, 45 A.L.R.2d 1234 (1954); Goergen v. State Tax Commission, 165 N.W.2d 782 (Iowa 1969).

2 Imperial Production Corp. v. City of Sweetwater, 210 F.2d 917 (5th Cir. 1954); State v. Flack, 251 Iowa 529, 101 N.W.2d 535 (1960).

3 Walters v. Bank of America Nat. Trust & Savings Ass'n, 9 Cal. 2d 46, 69 P.2d 839, 110 A.L.R. 1259 (1937); Goergen v. State Tax Commission, 165 N.W.2d 782 (Iowa 1969).

4 Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456, 143 N.E.2d 47 (1957); Goergen v. State Tax Commission, 165 N.W.2d 782 (Iowa 1969).

5 Crowell v. Benson, 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932); Kokins v. Teleflex, Inc., 621 F.3d 1290 (10th Cir. 2010); Walters v. Bank of America Nat. Trust & Savings Ass'n, 9 Cal. 2d 46, 69 P.2d 839, 110 A.L.R. 1259 (1937).

6 U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc., 508 U.S. 439, 113 S. Ct. 2173, 124 L. Ed. 2d 402 (1993); Gaida v. Planning and Zoning Com'n of City of Shelton, 108 Conn. App. 19, 947 A.2d 361 (2008); Warne v. Warne, 2012 UT 13, 2012 WL 748261 (Utah 2012).
The Supreme Court must give effect to every clause and word of an act. Setser v. U.S., 132 S. Ct. 1463 (2012).

7 Ali v. Federal Bureau of Prisons, 552 U.S. 214, 128 S. Ct. 831, 169 L. Ed. 2d 680 (2008).

8 In re Hickman, 448 B.R. 769 (Bankr. C.D. Ill. 2011); Com. v. Wallace, 431 Mass. 705, 730 N.E.2d 275 (2000).

9 Anniston Mfg. Co. v. Davis, 301 U.S. 337, 57 S. Ct. 816, 81 L. Ed. 1143 (1937); Chatman v. Findley, 274 Ga. 54, 548 S.E.2d 5 (2001); Hawley v. Board of Oil and Gas Conservation, 2000 MT 2, 297 Mont. 467, 993 P.2d 677 (2000).

10 Freytag v. C.I.R., 501 U.S. 868, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991); In re Haman, 366 B.R. 307 (Bankr. D. Del. 2007); Stachowski v. Sysco Food Services of Baltimore, Inc., 402 Md. 506, 937 A.2d 195 (2007); People v. Couzens, 480 Mich. 240, 747 N.W.2d 849 (2008).
Courts should not render statutes nugatory through construction. U.S. v. Tohono O'Odham Nation, 131 S. Ct. 1723, 179 L. Ed. 2d 723 (2011).
An interpretation of a statute that renders related provisions nugatory must be avoided; each sentence must be read not in isolation but in the light of the statutory scheme, and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. Slintak v. Buckeye Retirement Co., L.L.C., Ltd., 139 Cal. App. 4th 575, 43 Cal. Rptr. 3d 131 (2d Dist. 2006).

11 § 66.

12 Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456, 143 N.E.2d 47 (1957); McCullen v. State ex rel. Alexander for Use of Hinds County, 217 Miss. 256, 63 So. 2d 856 (1953).

13 Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456, 143 N.E.2d 47 (1957); Bates v. Mississippi Industrial Gas Co., 173 Miss. 361, 161 So. 133 (1935).

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E. Giving Effect to Statutes

§ 156. Parts of statute, generally

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West's Key Number Digest

West's Key Number Digest, Statutes 206, 208

In the interpretation of a statute, the legislature will be presumed to have inserted every part thereof for a purpose.[1] As a general rule, a statute should be construed so that effect is given to all its provisions so that no part will be inoperative or superfluous, void or insignificant.[2] It should not be presumed that any provision of a statute is redundant.[3] A statute should not be construed in such manner as to render it partly ineffective or inefficient if another construction will make it effective.[4]

Effect should be given, if possible, to every section,[5] paragraph,[6] sentence or clause,[7] phrase,[8] and word[9] of a statute. On the other hand, the court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context by giving the words a significance which would be clearly repugnant to the statute looked at as a whole and destructive of its obvious intent.[10]

Observation:

The Uniform Statute and Rule Construction Act provides that a statute or rule is construed, if possible, to give effect to its entire text.[11]

CUMULATIVE SUPPLEMENT

Cases:

A cardinal principle of statutory interpretation is that courts must give effect, if possible, to every clause and word of a statute. Liu v. Securities and Exchange Commission, 140 S. Ct. 1936 (2020).

The cardinal principle of interpretation is that courts must give effect, if possible, to every clause and word of a statute. Parker Drilling Management Services, Ltd. v. Newton, 139 S. Ct. 1881 (2019).

A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018).

Under the so-called "surplusage canon," a presumption exists that each word Congress uses in a statute is there for a reason. Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017).

The Supreme Court's practice is to give effect, if possible, to every clause and word of a statute. Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017).

It is presumed that statutory language is not superfluous. McDonnell v. U.S., 136 S. Ct. 2355 (2016).

Courts must give effect, if possible, to every clause and word of a statute. Loughrin v. U.S., 134 S. Ct. 2384 (2014).

Statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous. Clark v. Rameker, 134 S. Ct. 2242 (2014).

Canon against surplusage assists only where a competing interpretation gives effect to every clause and word of a statute. Marx v. General Revenue Corp., 133 S. Ct. 1166 (2013).

Canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme. Marx v. General Revenue Corp., 133 S. Ct. 1166 (2013).

Under New York law, meaning and effect should be given to all language of a statute; words are not to be rejected as superfluous where it is practicable to give each a distinct and separate meaning. U.S. v. Smith, 985 F. Supp. 2d 547 (S.D. N.Y. 2014).

Supreme Court will construe a statute so that no word is left void, superfluous, or insignificant, with meaning and effect given to every word in the statute if possible. Courtyard Gardens Health and Rehabilitation, LLC v. Quarles, 2013 Ark. 228, 428 S.W.3d 437 (2013).

When construing a statute, the court presumes the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, for it to harmonize with related statutes, and that the legislature did not intend an absurd result in enacting and interpreting the statute. Ky. Rev. Stat. Ann. § 446.080(1). Pleasant Unions, LLC v. Kentucky Tax Company, LLC, 615 S.W.3d 39 (Ky. 2021).

An appellate court will, if possible, give effect to every word, clause, and sentence of a statute, since the legislature is presumed to have intended every provision of a statute to have a meaning. State v. Covey, 290 Neb. 257, 859 N.W.2d 558 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Goergen v. State Tax Commission, 165 N.W.2d 782 (Iowa 1969); State v. White, 2012 WL 758916 (Tenn. 2012).

2 U.S. v. Jicarilla Apache Nation, 131 S. Ct. 2313, 180 L. Ed. 2d 187 (2011); Milner v. Department of Navy, 131 S. Ct. 1259, 179 L. Ed. 2d 268 (2011); Yeager v. Alvarez, 134 Conn. App. 112, 38 A.3d 1224 (2012); Adams v. City of Boston, 461 Mass. 602, 963 N.E.2d 694 (2012).
The court of appeals' examination of the plain meaning of a statute is guided by the principle that the court should read pertinent parts of the legislative language together, giving effect to all of those parts if it can, and rendering no part of the law surplusage. Dutta v. State Farm Ins. Co., 363 Md. 540, 769 A.2d 948 (2001).

3 U.S. v. Alaska, 521 U.S. 1, 117 S. Ct. 1888, 138 L. Ed. 2d 231 (1997); U.S. v. $133,420.00 in U.S. Currency, 672 F.3d 629 (9th Cir. 2012); People v. Baskerville, 2012 IL 111056, 357 Ill. Dec. 500, 963 N.E.2d 898 (Ill. 2012).

4 U.S. v. Powers, 307 U.S. 214, 59 S. Ct. 805, 83 L. Ed. 1245 (1939).

5 Bullock v. State, Dept. of Community and Regional Affairs, 19 P.3d 1209 (Alaska 2001); Ledbetter v. Hall, 191 Ark. 791, 87 S.W.2d 996 (1935).

6 Murray v. Department of Labor and Industries of Washington, 151 Wash. 95, 275 P. 66 (1929).

7 Duncan v. Walker, 531 U.S. 991, 121 S. Ct. 480, 148 L. Ed. 2d 454 (2000); Lopez v. United Auto. Ins. Co., 2012 UT 10, 2012 WL 621344 (Utah 2012); Redco Const. v. Profile Properties, LLC, 2012 WY 24, 271 P.3d 408 (Wyo. 2012).

8 U.S. v. Fisher, 19 Ct. Cl. 704, 109 U.S. 143, 3 S. Ct. 154, 27 L. Ed. 885 (1883); People v. Kerns, 2012 IL App (3d) 100375, 2012 WL 676394 (Ill. App. Ct. 3d Dist. 2012); Potomac Abatement, Inc. v. Sanchez, 424 Md. 701, 37 A.3d 972 (2012).

9 Rake v. Wade, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (1993); Potomac Abatement, Inc. v. Sanchez, 424 Md. 701, 37 A.3d 972 (2012); Gurley v. Missouri Bd. of Private Investigator Examiners, 2012 WL 724688 (Mo. 2012); Redco Const. v. Profile Properties, LLC, 2012 WY 24, 271 P.3d 408 (Wyo. 2012).
Each word in a statute should carry meaning. Ransom v. FIA Card Services, N.A., 131 S. Ct. 716, 178 L. Ed. 2d 603 (2011).

10 Van Dyke v. Cordova Copper Co, 234 U.S. 188, 34 S. Ct. 884, 58 L. Ed. 1273 (1914); Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E.2d 645 (1942).

11 Unif. Statute and Rule Construction Act § 18(a)(2).

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E. Giving Effect to Statutes

§ 157. Effect of difficulties in application or performance

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West's Key Number Digest

West's Key Number Digest, Statutes 174

Although the courts can only interpret a statute as framed, notwithstanding difficulties in its application,[1] a construction of an ambiguous statute should be avoided which would render the application of the statute impracticable[2] or inconvenient,[3] or which would require the performance of a vain, idle, or futile thing.[4] In addition, the courts should avoid a construction which attempts to require the performance of an impossible act.[5]

Footnotes

1 Armburg v. Boston & M.R.R., 276 Mass. 418, 177 N.E. 665, 80 A.L.R. 1408 (1931), aff'd, 285 U.S. 234, 52 S. Ct. 336, 76 L. Ed. 729 (1932).

2 U.S. v. Gallegos, 613 F.3d 1211 (9th Cir. 2010); State v. Schultz, 604 N.W.2d 60 (Iowa 1999).

3 Miami Conservancy Dist. v. Bucher, 87 Ohio App. 390, 43 Ohio Op. 114, 59 Ohio L. Abs. 97, 95 N.E.2d 226 (2d Dist. Montgomery County 1949).

4 U.S. v. American Trucking Ass'ns, 310 U.S. 534, 60 S. Ct. 1059, 84 L. Ed. 1345 (1940).
A court may depart from the text of a statute when its plain meaning produces absurd or futile results plainly at variance with the policy of the legislation as a whole, but the court must bear in mind that the it rarely invokes such a test to override unambiguous legislation. U.S. v. Crape, 603 F.3d 1237 (11th Cir. 2010).

5 Atlantic Coast Line R. Co. v. State, 135 Ga. 545, 69 S.E. 725 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914); State v. Irvine, 335 Mo. 261, 72 S.W.2d 96, 93 A.L.R. 232 (1934).

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§ 158. Construing statutes so as to avoid subterfuges, evasions, or circumvention

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West's Key Number Digest

West's Key Number Digest, Statutes 174

That construction of a statute is favored which would defeat subterfuges, expediencies, or evasions employed to continue the mischief sought to be remedied by the statute or to defeat compliance with its terms.[1] That is, statutory provisions should be construed in a manner which tends to prevent them from being circumvented.[2] That a statute may be easily evaded furnishes no excuse for supplying by judicial construction that which is palpably omitted therefrom.[3]

Footnotes

1 Freedland v. Greco, 45 Cal. 2d 462, 289 P.2d 463 (1955).

2 In re North Carolina Pesticide Bd. File Nos. IR94-128, IR94-151, IR94-155, 349 N.C. 656, 509 S.E.2d 165 (1998).

3 Meyers v. Walter, 253 S.W.2d 595 (Ky. 1952).

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§ 159. Related statutes; harmonizing statutes and parts thereof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 205, 206, 208

Ordinarily, related statutes should be construed, if possible, by reasonable interpretation, so as to give full force and effect to each of them,[1] since, where it is possible to do so, it is the duty of the courts in the construction of statutes to harmonize and reconcile laws and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions.[2] In this regard, it has been said that the courts are not at liberty to pick and choose among legislative enactments, and when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed legislative intention to the contrary, to regard each as effective[3] and that in interpreting related and co-existing statutes, the courts must harmonize and accord full application to each of these statutes unless they are irreconcilable and in hopeless conflict.[4] Where two acts or parts of acts are reasonably susceptible to a construction that will give effect to both, without violence to either, it should be adopted in preference to one which, though reasonable, leads to the conclusion that there is a conflict.[5] It is not assumed that one or the other of related statutes is meaningless; rather, such statutes will be so construed as to give each a field of operation.[6] A court will give effect to two statutes that overlap so long as each reaches some distinct cases.[7]

In the absence of a showing to the contrary, all laws are presumed to be consistent with each other.[8]

In addition to different statutes, the various provisions of a single act should be read so that all may, if possible, have effect without repugnancy or inconsistency[9] so as to render the statute a consistent and harmonious whole.[10]

CUMULATIVE SUPPLEMENT

Cases:

When a statute uses the phrase except as provided in followed by a cross-reference in order to indicate that one rule should prevail over another in any circumstance in which the two conflict, such clauses explain what happens in the case of a clash, but they do not otherwise expand or contract the scope of either provision by implication. Atlantic Richfield Company v. Christian, 140 S. Ct. 1335 (2020).

Courts hesitate to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law. Maine Community Health Options v. United States, 140 S. Ct. 1308 (2020).

When confronted with two Acts of Congress allegedly touching on the same topic, the court is not at liberty to pick and choose among congressional enactments and must instead strive to give effect to both. Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018).

Congress's failure in one statutory provision to impose a limit expressly stated in another provision can signal its intent not to narrow the reach of the unmodified word. United States v. Ng Lap Seng, 934 F.3d 110 (2d Cir. 2019).

When interpreting a statute, the Supreme Court will reconcile provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part. (Per Baker, J., with two justices joining, and one justice concurring.) Treat v. State, 2019 Ark. 326, 588 S.W.3d 10 (2019).

Courts strive to reconcile statutory provisions to make them consistent, harmonious, and sensible. Rose v. Harbor East, Inc., 2013 Ark. 496, 430 S.W.3d 773 (2013).

In construing statutes, relevant provisions must be considered together whenever possible to give full force and effect to each. H.B. Krug v. Helmerich & Payne, Inc., 2015 OK 74, 362 P.3d 205 (Okla. 2015).

Courts are to construe statutes reasonably, to avoid statutory conflict and provide for harmonious operation of the laws. Foster v. Chiles, 467 S.W.3d 911 (Tenn. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Ricci v. DeStefano, 557 U.S. 557, 129 S. Ct. 2658, 174 L. Ed. 2d 490 (2009); Indiana Ass'n of Beverage Retailers, Inc. v. Indiana Alcohol and Tobacco Com'n, 945 N.E.2d 187 (Ind. Ct. App. 2011), transfer denied, 962 N.E.2d 645 (Ind. 2011); U.S. v. Juvenile Male, 2011 MT 104, 360 Mont. 317, 255 P.3d 110 (2011); Christiansen v. Christiansen, 2011 WY 90, 253 P.3d 153 (Wyo. 2011).

The canon against interpreting any statutory provision in a manner that would render another provision superfluous applies to interpreting any two provisions in the United States Code even when Congress enacted the provisions at different times; the canon cannot be overcome by judicial speculation as to the subjective intent of various legislators in enacting the subsequent provision. Bilski v. Kappos, 130 S. Ct. 3218, 177 L. Ed. 2d 792 (2010).

The Uniform Statute and Rule Construction Act provides that if statutes appear to conflict, they must be construed, if possible, to give effect to each. Unif. Statute and Rule Construction Act § 10(a).

2 Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1273 (Fla. 2000); In re Gray-Sadler, 164 N.J. 468, 753 A.2d 1101 (2000); State ex rel. Heitkamp v. Family Life Services, Inc., 2000 ND 166, 616 N.W.2d 826 (N.D. 2000).

3 J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc., 534 U.S. 124, 122 S. Ct. 593, 151 L. Ed. 2d 508 (2001); Andrus v. Glover Const. Co., 446 U.S. 608, 100 S. Ct. 1905, 64 L. Ed. 2d 548 (1980).

4 In re Equipment Acquisition Resources, Inc., 451 B.R. 454 (Bankr. N.D. Ill. 2011); McCourt Mfg. Corp. v. Rycroft, 2009 Ark. 332, 322 S.W.3d 491 (2009).

When there are two acts upon the same subject, the rule is to give effect to both if possible. U.S. v. Borden Co., 308 U.S. 188, 60 S. Ct. 182, 84 L. Ed. 181 (1939).

5 State v. Anderson, 2011 OK CIV APP 13, 247 P.3d 294 (Div. 3 2010), cert. denied, (Jan. 24, 2011).

6 State Dept. of Public Welfare v. Galilean Children's Home, 102 So. 2d 388 (Fla. Dist. Ct. App. 2d Dist. 1958).

7 J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc., 534 U.S. 124, 122 S. Ct. 593, 151 L. Ed. 2d 508 (2001).

8 In re Karns, 236 Iowa 932, 20 N.W.2d 474 (1945); State ex rel. Pinson v. Varney, 142 W. Va. 105, 96 S.E.2d 72 (1956).

Where the text permits, congressional enactments should be construed to be consistent with one another. Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp., 130 S. Ct. 2433, 177 L. Ed. 2d 424 (2010).

9 Helvering v. Credit Alliance Corporation, 316 U.S. 107, 62 S. Ct. 989, 86 L. Ed. 1307 (1942); Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E.2d 645 (1942).

As to altering or supplying words and phrases to statutes to avoid repugnancy and inconsistency, see §§ 106 to 114.

10 City of North Las Vegas v. Warburton, 262 P.3d 715, 127 Nev. Adv. Op. No. 62 (Nev. 2011); Food and Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000); In re Butcher, 459 B.R. 115 (Bankr. D. Colo. 2011).

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§ 160. Related statutes; harmonizing statutes and parts thereof—Effect of irreconcilable provisions

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West's Key Number Digest

West's Key Number Digest, Statutes 207

Where effect cannot be given to all the provisions of a statute because some of them are inconsistent and irreconcilable, a construction is sought which would give effect to the purpose of the statute and the intention of the legislature.[1] In this regard, the view has been followed that where statutes are in conflict, the one last enacted in point of time generally prevails[2] as being the latest expression of the legislative intent.[3] In fact, in this regard, it has been said that the general rule of statutory interpretation is that a subsequent statutory provision prevails over a pre-existing and irreconcilably conflicting provision which is not expressly repealed.[4] In the event of an irreconcilable conflict between different parts of a statute, the part that is last in order or position and arrangement should prevail.[5]

Under the Uniform Statute and Rule Construction Act, if a conflict between statutes is irreconcilable, the later enacted statute governs.[6] However, an earlier enacted specific, special, or local statute prevails over a later enacted general statute unless the context of the later enacted statute indicates otherwise.[7]

In some cases, the irreconcilably conflicting provisions of a statute may be such as to compel the court to declare them void.[8]

CUMULATIVE SUPPLEMENT

Cases:

A party seeking to suggest that two federal statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing a clearly expressed and manifest congressional intention. Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Golden Valley County v. Lundin, 52 N.D. 420, 203 N.W. 317 (1925).
As to inconsistent and irreconcilable provision in codes, revisions, or consolidations, see § 221.

2 Slater v. McKinna, 997 P.2d 1196 (Colo. 2000); Com. v. Russ R., 433 Mass. 515, 744 N.E.2d 39 (2001); Eagle Container Co., LLC v. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (2008).
The "last legislative expression rule," which provides that where conflicting provisions of a statute exist, the last in point of time or order of arrangement prevails, is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted. Jervey v. Martint Environmental, Inc., 396 S.C. 442, 721 S.E.2d 469 (Ct. App. 2012).

3 Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1273 (Fla. 2000); Petition of Port of St. Helens of Columbia County, 19 Or. App. 87, 526 P.2d 626 (1974).

4 People ex rel. Thorpe on Behalf of Richard M. v. Clark, 62 A.D.2d 216, 403 N.Y.S.2d 910 (2d Dep't 1978).

5 In re Cornerstone E & P Co., L.P., 436 B.R. 830 (Bankr. N.D. Tex. 2010), supplemented on other grounds, 436 B.R. 865 (Bankr. N.D. Tex. 2010) (applying Oklahoma law).

6 Unif. Statute and Rule Construction Act § 10(a).

7 § 161.

8 § 234.

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§ 161. Effect of general and specific provisions; special or incidental treatment of subject

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West's Key Number Digest

West's Key Number Digest, Statutes 223.4

Where there is in the same statute a specific provision and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision;[1] additional words of qualification needed to harmonize a general and a prior special provision in the same statute should be added to the general provision rather than to the special one.[2] This general rule is applicable only as an aid in ascertaining and giving effect to the legislative intent.[3]

Similarly, with respect to a conflict arising between a statute dealing generally with a subject and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case.[4] Moreover, statutes complete in themselves, relating to a specific subject, take precedence over general statutes or over other statutes that deal only incidentally with the same question.[5] It has also been said that when two statutes appear to conflict and cannot be reconciled, the provision later in the chapter prevails if it is more specific than the provision occurring earlier in the chapter, while the more recent provision prevails if it is more specific than its predecessor.[6]

If one statutory section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is a conflict, the specific section will control over the general.[7]

Under the Uniform Statute and Rule Construction Act, an earlier enacted specific, special, or local statute prevails over a later enacted general statute unless the context of the later enacted statute indicates otherwise.[8]

CUMULATIVE SUPPLEMENT

Cases:

The no-elephants-in-mouseholes canon recognizes that Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions. Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020).

Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions. King v. Burwell, 135 S. Ct. 2480 (2015).

Statute's general permission to take actions of a certain type must yield to specific prohibition found elsewhere. Law v. Siegel, 134 S. Ct. 1188 (2014).

A broad grant of authority that fills a space that the specific provisions do not occupy does not run afoul of the canon that a specific statute controls over a general provision. Adirondack Medical Center v. Sebelius, 740 F.3d 692 (D.C. Cir. 2014).

Where one statute deals with a subject in general terms and another statute deals with a part of the same subject in a more specific manner, then the two should be harmonized, if possible; but if they are in irreconcilable conflict then the more detailed will prevail as to the subject matter it covers. City of New Albany v. Board of Commissioners of County of Floyd, 125 N.E.3d 636 (Ind. Ct. App. 2019), adhered to on reh'g, 130 N.E.3d 660 (Ind. Ct. App. 2019).

The doctrine of in pari materia recognizes that statutes relating to the same subject matter should be read together, but where one statute deals with the subject in general terms and the other deals in a specific way, to the extent they conflict, the specific statute prevails over the general statute. State ex rel. Taylor v. Russell, 449 S.W.3d 380 (Mo. 2014).

In cases of statutory inconsistencies, the later and more specific statute controls over the earlier and more general one. Anderson v. Dussault, 333 P.3d 395 (Wash. 2014).

[END OF SUPPLEMENT]

Footnotes

1 U.S. v. Cihal, 336 F. Supp. 261 (W.D. Pa. 1972), aff'd, 497 F.2d 922 (3d Cir. 1974); Elliott v. Workers' Compensation Appeals Bd., 182 Cal. App. 4th 355, 105 Cal. Rptr. 3d 760 (1st Dist. 2010).
General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. Bloate v. U.S., 130 S. Ct. 1345, 176 L. Ed. 2d 54 (2010).
Ordinarily, where a specific statutory provision conflicts with a general one, the specific governs. Edmond v. U.S., 520 U.S. 651, 117 S. Ct. 1573, 137 L. Ed. 2d 917 (1997).
Under the general rule of statutory interpretation that, in the event of statutory conflict, a specific provision will control over a general provision, the referent of "general" and "specific" is subject matter. Arterberry v. County of San Diego, 182 Cal. App. 4th 1528, 106 Cal. Rptr. 3d 743 (4th Dist. 2010).

2 Ritter v. Dagel, 261 Iowa 870, 156 N.W.2d 318 (1968); Brady v. City of Detroit, 353 Mich. 243, 91 N.W.2d 257 (1958).

3 People v. Murphy, 52 Cal. 4th 81, 127 Cal. Rptr. 3d 78, 253 P.3d 1216 (2011); Brady v. Place, 41 Idaho 747, 243 P. 654 (1926); Brady v. City of Detroit, 353 Mich. 243, 91 N.W.2d 257 (1958).

4 Busic v. U. S., 446 U.S. 398, 100 S. Ct. 1747, 64 L. Ed. 2d 381 (1980); In re Maria D., 199 Cal. App. 4th 109, 131 Cal. Rptr. 3d 21 (2d Dist. 2011), review denied, (Dec. 14, 2011); Griffin Pipe Products Co., Inc.

v. Board of Review of County of Pottawattamie, 789 N.W.2d 769 (Iowa 2010); State v. Turner, 293 Kan. 1085, 272 P.3d 19 (2012); Johnson v. QFD, Inc., 292 Mich. App. 359, 807 N.W.2d 719, 74 U.C.C. Rep. Serv. 2d 397 (2011).

When two statutes apparently overlap, the statute special and particular shall control over the statute general in nature, even if the general statute is more recent, unless it clearly appears that the legislature intended the general statute to control. Technocom Business Systems, Inc. v. North Carolina Dept. of Revenue, 723 S.E.2d 151 (N.C. Ct. App. 2012).

5 State v. Turner, 293 Kan. 1085, 272 P.3d 19 (2012).

6 Bailey v. State, 147 Wash. App. 251, 191 P.3d 1285, 235 Ed. Law Rep. 1144 (Div. 3 2008).

7 Nelson v. Municipality of Anchorage, 267 P.3d 636 (Alaska 2011); Wheeler v. Idaho Dept. of Health and Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

8 Unif. Statute and Rule Construction Act § 10(a).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 162. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 174, 212.2, 212.3

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Defense of inconsequential or de minimis violation in criminal prosecution, 68 A.L.R.5th 299

It is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute where the act is ambiguous in terms and fairly susceptible of two constructions.[1] Under such circumstances, it is presumed that undesirable consequences were not intended;[2] instead, it is presumed that the statute was intended to have the most beneficial operation that the language permits.[3] A construction of which the statute is fairly susceptible is favored which will avoid all objectionable,[4] mischievous,[5] indefensible,[6] wrongful,[7] evil,[8] and injurious consequences.[9]

On the other hand, where a statute is so plain and unambiguous that it is not susceptible of more than one construction, courts construing the same should not be concerned with the consequences resulting therefrom.[10] The undesirable consequences do not justify a departure from the terms of the act as written.[11] In such case, the consequences, if objectionable, can only be avoided by a change of the law itself, to be effected by the legislature, and not by judicial action in the guise of interpretation.[12]

Observation:

The Uniform Statute and Rule Construction Act provides that a statute or rule is construed, if possible, to avoid an unconstitutional or unachievable result.[13]

CUMULATIVE SUPPLEMENT

Cases:

Congress generally intends the full consequences of what it says in a statute, even if inconvenient, costly, and inefficient. Thacker v. Tennessee Valley Authority, 139 S. Ct. 1435 (2019).

District court was bound by the Florida Supreme Court's construction of a Florida statute. Burroughs v. Corey, 92 F. Supp. 3d 1201 (M.D. Fla. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Kreitlein v. Ferger, 238 U.S. 21, 35 S. Ct. 685, 59 L. Ed. 1184 (1915); Barber v. California Dept. of Corrections and Rehabilitation, 203 Cal. App. 4th 638, 137 Cal. Rptr. 3d 727 (4th Dist. 2012), review filed, (Mar. 21, 2012); In re Application of County Treasurer and Ex Officio County Collector of Cook County, Ill., 2011 IL App (1st) 101966, 353 Ill. Dec. 202, 955 N.E.2d 669 (App. Ct. 1st Dist. 2011), appeal denied, 356 Ill. Dec. 797, 962 N.E.2d 482 (Ill. 2011); Silverman v. Mike Rogers Drilling Co., Inc., 34 So. 3d 1099 (La. Ct. App. 2d Cir. 2010), writ denied, 45 So. 3d 1049 (La. 2010).
If the statute is ambiguous or uncertain, the court may consider conditions which might arise under the provisions of the statute and examine results that will flow from giving the language in question one particular meaning. Ex parte Berryhill, 801 So. 2d 7 (Ala. 2001).

2 In re Sandifer, 448 B.R. 382 (Bankr. D. S.C. 2011); People v. Marshall, 242 Ill. 2d 285, 351 Ill. Dec. 172, 950 N.E.2d 668 (2011); In re R.A., 2011 ND 119, 799 N.W.2d 332 (N.D. 2011); Hubbard v. Kaiser-Francis Oil Co., 2011 OK 50, 256 P.3d 69 (Okla. 2011).

3 McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969); Cameron v. State Highway Commission, 188 N.C. 84, 123 S.E. 465 (1924); Phipps v. Kirk, 333 Pa. 478, 5 A.2d 143 (1939).

4 McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969); Reilly v. City Deposit Bank & Trust Co., 322 Pa. 577, 185 A. 620 (1936).

5 Birkett v. Columbia Bank, 195 U.S. 345, 25 S. Ct. 38, 49 L. Ed. 231 (1904); McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969).

6 Pomeroy v. National City Co., 209 Minn. 155, 296 N.W. 513, 133 A.L.R. 766 (1941); McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969).

7 Brun v. Mann, 151 F. 145 (C.C.A. 8th Cir. 1906); McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969).

8 Lost Creek School Tp., Vigo County v. York, 215 Ind. 636, 21 N.E.2d 58, 127 A.L.R. 1287 (1939); McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969).

9 U.S. v. Powers, 307 U.S. 214, 59 S. Ct. 805, 83 L. Ed. 1245 (1939); McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So. 2d 459 (Miss. 1969).

10 Commissioner of Immigration of Port of New York v. Gottlieb, 265 U.S. 310, 44 S. Ct. 528, 68 L. Ed. 1031 (1924); Naum v. Naum, 101 N.H. 367, 143 A.2d 424, 65 A.L.R.2d 1130 (1958).

11 C.I.R. v. Asphalt Products Co., Inc., 482 U.S. 117, 107 S. Ct. 2275, 96 L. Ed. 2d 97 (1987); In re Jessup, 81 Cal. 408, 22 P. 1028 (1889).

12 Walsh v. State, 33 Del. 514, 139 A. 257, 56 A.L.R. 810 (1927); Cameron v. State Highway Commission, 188 N.C. 84, 123 S.E. 465 (1924).

13 Unif. Statute and Rule Construction Act § 18(a)(3).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 163. Unreasonable or absurd results

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 212.3

A court must construe statutes to avoid unreasonable or absurd results;[1] or, as sometimes, stated, a court should not adopt an interpretation which produces absurd or unreasonable results if such interpretation can be avoided.[2] In this regard, it has been said that a court presumes that the legislature intends reasonable, just, and constitutional results from the statutes it enacts.[3] If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction,[4] and if a statute is capable of being construed in different ways, that construction which works an absurd or unreasonable result should be avoided.[5]

These rules prevail where they are not restrained by the clear language of the statute.[6] However, a court will not give a statute a literal interpretation if it leads to absurd consequences that are contrary to the legislative intent.[7] Furthermore, general terms in a statute should be so limited in their application as not to lead to absurd consequences.[8]

The rule that the letter of a statute will be departed from where absurd results would otherwise follow must be carefully applied; while the fact that absurd results follow the literal application of the language justifies a search of the statute for further indications of the legislative intent, it does not justify the court in giving the statute a meaning to which its language is not susceptible.[9] The rule is to be applied only where the absurdity is so gross as to shock the general moral or common sense; it is not enough that absurd consequences which were probably not within the contemplation of the legislature are produced.[10] So long as it remains within constitutional boundaries, the legislature has the authority to intentionally and knowingly enact statutory provisions that may lead to unreasonable results; in that event, a judicial rewriting of the statute is not the appropriate remedy.[11]

CUMULATIVE SUPPLEMENT

Cases:

Courts should not resort to the absurdity doctrine merely because of disagreements with the result of legislation. Owens v. State, 303 So. 3d 993 (Fla. 1st DCA 2020).

Appellate court's respect for the Legislature's considered judgment dictates that appellate courts interpret the statute to be sensible, rejecting unreasonable interpretations unless the clear meaning of the language requires such an interpretation. Depianti v. Jan-Pro Franchising Intern., Inc., 465 Mass. 607, 990 N.E.2d 1054 (2013).

Since statutes must be construed according to their intent, the intent must be determined from the statute as a whole, as well as enactments relating to the same subject; however, in construing statutes together, it is presumed that the legislature did not intend an absurd or unreasonable result. In re Estate of Hamilton, 2012 SD 34, 814 N.W.2d 141 (S.D. 2012).

Supreme Court has an obligation to interpret law in a manner avoiding absurd results. State v. Robert, 2012 SD 27, 814 N.W.2d 122 (S.D. 2012).

Courts occasionally will entertain a somewhat unnatural or creative reading of a statutory text if such an interpretation is necessary to further a statute's purpose or is necessary to prevent an absurd result that the legislature could not have intended. Milwaukee Journal Sentinel v. City of Milwaukee, 2012 WI 65, 815 N.W.2d 367 (Wis. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Durr v. Shinseki, 638 F.3d 1342 (11th Cir. 2011); Hinojosa v. State, 2009 Ark. 301, 319 S.W.3d 258 (2009); Montes-Rodriguez v. People, 241 P.3d 924 (Colo. 2010).

2 Newman v. Planning and Zoning Com'n of Town of Avon, 293 Conn. 209, 976 A.2d 698 (2009); Casper v. American Intern. South Ins. Co., 2011 WI 81, 336 Wis. 2d 267, 800 N.W.2d 880 (2011).
Interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available. Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 102 S. Ct. 3245, 73 L. Ed. 2d 973 (1982).
The Uniform Statute and Rule Construction Act provides that a statute is construed, if possible, to avoid an absurd result. Unif. Statute and Rule Construction Act § 18(a)(3).

3 State v. Pommer, 110 Conn. App. 608, 955 A.2d 637 (2008).
In construing a statute, a court will presume that the legislature did not intend an absurd, inconvenient, or unjust result in enacting the legislation. In re T.W., 402 Ill. App. 3d 981, 342 Ill. Dec. 234, 932 N.E.2d 125 (1st Dist. 2010).

4 Alexander v. Cosden Pipe Line Co., 290 U.S. 484, 54 S. Ct. 292, 78 L. Ed. 452 (1934); Johnson v. Frankfort & C. R. R., 303 Ky. 256, 197 S.W.2d 432 (1946).

5 Florida Dept. of Environmental Protection v. ContractPoint Florida Parks, LLC, 986 So. 2d 1260 (Fla. 2008); Jadair Inc. v. U.S. Fire Ins. Co., 209 Wis. 2d 187, 562 N.W.2d 401 (1997).

6 Perry v. Commerce Loan Co., 383 U.S. 392, 86 S. Ct. 852, 15 L. Ed. 2d 827 (1966); Austin v. Strong, 117 Tex. 263, 1 S.W.2d 872, 79 A.L.R. 1528 (Comm'n App. 1928).

7 AT & T Communications of The Southwest, Inc. v. Arkansas Public Service Com'n, 344 Ark. 188, 40 S.W.3d 273 (2001); Henisse v. First Transit, Inc., 247 P.3d 577 (Colo. 2011).

8 Helvering v. Hammel, 311 U.S. 504, 61 S. Ct. 368, 85 L. Ed. 303, 131 A.L.R. 1481 (1941); In re Blalock, 31 F.2d 612 (N.D. Ga. 1929).

9 Fullerton v. Lamm, 177 Or. 655, 165 P.2d 63 (1946); State ex rel. Associated Indem. Corp. v. Mortensen, 224 Wis. 398, 272 N.W. 457, 110 A.L.R. 524 (1937).

10 Crooks v. Harrelson, 282 U.S. 55, 51 S. Ct. 49, 75 L. Ed. 156 (1930).

11 Saylor v. Westar Energy, Inc., 292 Kan. 610, 256 P.3d 828 (2011).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 164. Unwise results

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 212.3

The mere fact that a statute leads to unwise results is not sufficient to justify the court in rejecting the plain meaning of unambiguous words,[1] or in giving to a statute a meaning of which its language is not susceptible,[2] or in restricting the scope of a statute.[3] By the same token, an omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the language of the statute.[4] To the contrary, it is the duty of the courts to interpret a statute as they find it, without reference to whether its provisions are wise or unwise,[5] necessary or unnecessary,[6] appropriate or inappropriate,[7] or well or ill conceived.[8]

Footnotes

1 Town of Mechanicsville v. State Appeal Bd., 253 Iowa 517, 111 N.W.2d 317 (1961); Fairbanks, Morse & Co. v. Town of Cape Charles, 144 Va. 56, 131 S.E. 437 (1926).

2 Board of School Trustees of Las Vegas Union School Dist. No. 12 v. Bray, 60 Nev. 345, 109 P.2d 274 (1941); State ex rel. Associated Indem. Corp. v. Mortensen, 224 Wis. 398, 272 N.W. 457, 110 A.L.R. 524 (1937).

3 Packard Motor Car Co. v. N.L.R.B., 330 U.S. 485, 67 S. Ct. 789, 91 L. Ed. 1040 (1947).

4 U.S. v. Goldenberg, 168 U.S. 95, 18 S. Ct. 3, 42 L. Ed. 394 (1897); Rice v. Denny Roll & Panel Co., 199 N.C. 154, 154 S.E. 69 (1930).

5 U.S. v. South-Eastern Underwriters Ass'n, 322 U.S. 533, 64 S. Ct. 1162, 88 L. Ed. 1440 (1944); Henry Bickel Co. v. City of Louisville, 282 Ky. 38, 137 S.W.2d 717, 127 A.L.R. 1084 (1940); State v. Stark, 2011 SD 46, 802 N.W.2d 165 (S.D. 2011).

6 Olsen v. State of Nebraska ex rel. Western Reference & Bond Ass'n, 313 U.S. 236, 61 S. Ct. 862, 85 L. Ed. 1305, 133 A.L.R. 1500 (1941); Botts v. Southeastern Pipe-Line Co., 190 Ga. 689, 10 S.E.2d 375 (1940); State v. Stark, 2011 SD 46, 802 N.W.2d 165 (S.D. 2011).

7 Olsen v. State of Nebraska ex rel. Western Reference & Bond Ass'n, 313 U.S. 236, 61 S. Ct. 862, 85 L. Ed. 1305, 133 A.L.R. 1500 (1941); Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 60 S. Ct. 907, 84 L. Ed. 1263 (1940).

8 Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015 (1933).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 165. Inequitable, unjust, or oppressive results

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 212.3

It is a rule of construction to resolve any ambiguity in a statute in favor of an equitable operation of the law.[1] However, the courts may not give to a statute a meaning to which its language is not susceptible, merely to avoid what the court believes are inequitable results.[2]

The view has also been followed that a court should not adopt an interpretation which produces unjust or oppressive results if such interpretation can be avoided.[3] It will not be presumed to have been within the legislative intent to enact a law having an unjust result.[4] On the contrary, it is the duty of courts to render such an interpretation of the laws as will best subserve the ends of justice, in so far as this may be accomplished in accordance with established rules of statutory construction,[5] and it is considered a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a just[6] or fair interpretation thereof,[7] or in favor of such an interpretation as would promote[8] and effectuate justice.[9]

The general intention of the legislature ordinarily controls the strict letter of the statute where an adherence to the strict letter would lead to injustice.[10]

On the other hand, if the meaning of a statute is plain and its provisions are susceptible of but one interpretation, the courts in construing the statute may not take into consideration the injustice which may be caused thereby.[11] If the provisions of a statute are unfair or unjust, the remedy is by a change of the law itself to be effected by the legislature and not by judicial action in the guise of interpretation.[12]

Footnotes

1 Commercial Bank & Trust Co. v. Citizens' Trust & Guaranty Co. of West Virginia, 153 Ky. 566, 156 S.W. 160 (1913); Crescent Mfg. Co. v. Tax Com'n, 129 S.C. 480, 124 S.E. 761 (1924).

2 Holden v. Stratton, 198 U.S. 202, 25 S. Ct. 656, 49 L. Ed. 1018 (1905); State ex rel. Associated Indem. Corp. v. Mortensen, 224 Wis. 398, 272 N.W. 457, 110 A.L.R. 524 (1937).

3 Durr v. Shinseki, 638 F.3d 1342 (11th Cir. 2011); City and County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

4 In re Indianapolis Downs, LLC, 462 B.R. 104 (Bankr. D. Del. 2011); In re Haley D., 2011 IL 110886, 355 Ill. Dec. 375, 959 N.E.2d 1108 (Ill. 2011); A.J. v. Logansport State Hosp., 956 N.E.2d 96 (Ind. Ct. App. 2011); In re R.A., 2011 ND 119, 799 N.W.2d 332 (N.D. 2011).

5 Hubbard v. Kaiser-Francis Oil Co., 2011 OK 50, 256 P.3d 69 (Okla. 2011); Charleston & W.C. Ry. Co. v. Gosnell, 106 S.C. 84, 90 S.E. 264 (1916).

6 St. Louis, I.M. & S. Ry. Co. v. Taylor, 210 U.S. 281, 28 S. Ct. 616, 52 L. Ed. 1061 (1908); Silverman v. Mike Rogers Drilling Co., Inc., 34 So. 3d 1099 (La. Ct. App. 2d Cir. 2010), writ denied, 45 So. 3d 1049 (La. 2010); In re Greg H., 208 W. Va. 756, 542 S.E.2d 919 (2000).

7 Carey v. Donohue, 240 U.S. 430, 36 S. Ct. 386, 60 L. Ed. 726 (1916); In re Succession of Boyter, 756 So. 2d 1122 (La. 2000); City of Worcester v. Quinn, 304 Mass. 276, 23 N.E.2d 463, 125 A.L.R. 707 (1939).

8 S.L.H. v. State Compensation Mut. Ins. Fund, 2000 MT 362, 303 Mont. 364, 15 P.3d 948 (2000); Mitchell v. Broadnax, 208 W. Va. 36, 537 S.E.2d 882 (2000).

9 Chicago & N.W. Ry. Co. v. Moss, 210 Iowa 491, 231 N.W. 344, 71 A.L.R. 936 (1930); Gulf Oil Corp. v. Kosydar, 44 Ohio St. 2d 208, 73 Ohio Op. 2d 507, 339 N.E.2d 820 (1975).

10 Sorrells v. U.S., 287 U.S. 435, 53 S. Ct. 210, 77 L. Ed. 413, 86 A.L.R. 249 (1932); Wallen v. Collins, 36 Del. 266, 173 A. 801 (Super. Ct. 1934); People, for Use of Saline County, v. Wallace, 291 Ill. 465, 126 N.E. 175 (1920).

11 State Board of Tax Com'rs of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536 (1931); Donoghue v. Smith, 119 Vt. 259, 126 A.2d 93 (1956).

12 Watson v. Buck, 313 U.S. 387, 61 S. Ct. 962, 85 L. Ed. 1416, 136 A.L.R. 1426 (1941); Donoghue v. Smith, 119 Vt. 259, 126 A.2d 93 (1956).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 166. Inequitable, unjust, or oppressive results —Discriminatory or unequal operation of statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 212.3

An intent to discriminate unjustly between different cases of the same kind is not to be ascribed to the legislature.[1] Thus, where the legislature has clearly laid down a rule for one class of cases, it is not readily to be supposed that, in the same act, a different rule has been prescribed for another class of cases within the same reason as the first.[2] Where the language of a statute is ambiguous, the courts will strive to avoid an interpretation producing a senseless distinction or discrimination,[3] or the unequal operation generally,[4] of the statute. In this regard, nothing but clear and unmistakable language will warrant a court in a construction which will produce the unequal operation of a statute.[5]

Reminder:

Federal statutes are sometimes interpreted so as to give them a uniform application throughout the nation. However, a federal statute is not required to be given such an interpretation as will give it a uniform operation in all states irrespective of local law in matters normally within state power.[6]

Footnotes

1 Kellum v. Johnson, 237 Miss. 580, 115 So. 2d 147 (1959).

2 Metcalf v. City of Watertown, 153 U.S. 671, 14 S. Ct. 947, 38 L. Ed. 861 (1894); L.B. Wilson, Inc. v. F.C.C., 170 F.2d 793 (App. D.C. 1948).

3 American Tobacco Co. v. Patterson, 456 U.S. 63, 102 S. Ct. 1534, 71 L. Ed. 2d 748 (1982); Roby v. Hawthorne, 84 S.W.2d 1108 (Tex. Civ. App. Dallas 1935), writ dismissed.

4 Bouse v. Hutzler, 180 Md. 682, 26 A.2d 767, 141 A.L.R. 843 (1942); Pierson v. Faulkner, 134 Neb. 865, 279 N.W. 813 (1938).

5 Smith v. Townsend, 148 U.S. 490, 13 S. Ct. 634, 37 L. Ed. 533 (1893); Magnolia Pipe Line Co. v. Oklahoma Tax Commission, 1946 OK 113, 196 Okla. 633, 167 P.2d 884 (1946).

6 § 62.

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F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 167. Inconvenience

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 174, 212.2

In construing a statute, courts presume that the legislature, in the enactment of legislation, did not intend inconvenience.[1] Thus, where a statute is ambiguous and susceptible of two constructions, convenience may be taken into consideration in the interpretation of the statute,[2] and there is authority for the view that a construction of an ambiguous statute so as to produce convenient results is favored.[3] These rules are particularly applicable where the inconvenience is great.[4]

However, it is neither the function nor the privilege of the courts to annul the plain provisions of a statute because of the belief that the observance or enforcement thereof will work an inconvenience.[5]

Footnotes

1 Michigan Ave. Nat. Bank v. County of Cook, 191 Ill. 2d 493, 247 Ill. Dec. 473, 732 N.E.2d 528 (2000).

2 U.S. v. State of California, 297 U.S. 175, 56 S. Ct. 421, 80 L. Ed. 567 (1936); Reilly v. City Deposit Bank & Trust Co., 322 Pa. 577, 185 A. 620 (1936).
As to the inconvenience of a particular construction of a statute as a justification for implied exceptions thereto, see § 205.

3 Perdue v. Greater Lafayette Health Services, Inc., 951 N.E.2d 235 (Ind. Ct. App. 2011), transfer denied, 962 N.E.2d 651 (Ind. 2011); Stennis v. City of Santa Fe, 149 N.M. 92, 2010-NMCA-108, 244 P.3d 787 (Ct. App. 2010).

4 Knowlton v. Moore, 178 U.S. 41, 20 S. Ct. 747, 44 L. Ed. 969 (1900); People, for Use of Saline County, v. Wallace, 291 Ill. 465, 126 N.E. 175 (1920).

5 U.S. v. Chicago, St. P., M. & O. Ry. Co., 43 F.2d 300, 71 A.L.R. 507 (C.C.A. 8th Cir. 1930); State ex rel. Murane v. Jack, 52 Wyo. 173, 70 P.2d 888, 112 A.L.R. 161 (1937).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 168. Effect of public policy or protection of public

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 174, 212.2

A purpose to disregard sound public policy must not be attributed to the lawmaking power except upon the most cogent evidence;[1] in fact, it is the duty of the courts to render such an interpretation of the laws as will best promote the protection of the public insofar as this may be accomplished in accordance with well-established rules of construction.[2] In some cases, the words of a statute may even be restrained or enlarged so as to comport with principles of sound public policy.[3] On the other hand, it is declared that it is the duty of courts to interpret a law as they find it without reference to whether its provisions constitute good or sound public policy.[4] In addition, where the legislative purpose has been declared in plain and unmistakable language, it is not within the province of the court to interpose contrary views of what the public need demands although as individuals, the members of the court may hold convictions opposed to those of the legislature.[5] Thus, if the public welfare demands a change in the law, it is to be effected by the legislature and not by the courts in the guise of interpretation.[6]

Footnotes

1 Bayonne Textile Corp. v. American Federation of Silk Workers, 116 N.J. Eq. 146, 172 A. 551, 92 A.L.R. 1450 (Ct. Err. & App. 1934); Rowley v. Public Service Commission, 112 Utah 116, 185 P.2d 514 (1947).
As to public welfare as a justification for implied exceptions to a statute, see § 205.

2 Charleston & W.C. Ry. Co. v. Gosnell, 106 S.C. 84, 90 S.E. 264 (1916); Rowley v. Public Service Commission, 112 Utah 116, 185 P.2d 514 (1947).

3 Bayonne Textile Corp. v. American Federation of Silk Workers, 116 N.J. Eq. 146, 172 A. 551, 92 A.L.R. 1450 (Ct. Err. & App. 1934); Rowley v. Public Service Commission, 112 Utah 116, 185 P.2d 514 (1947).

If the statutory language does not address the standard of proof on an issue, then the court looks to reason and public policy to determine the legislature's intent. J.D. Construction v. IBEX Int'l Group, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

4 U.S. v. Cooper Corporation, 312 U.S. 600, 61 S. Ct. 742, 85 L. Ed. 1071 (1941); Butterworth v. Boyd, 12 Cal. 2d 140, 82 P.2d 434, 126 A.L.R. 838 (1938).

5 Betz v. Horr, 276 N.Y. 83, 11 N.E.2d 548, 114 A.L.R. 491 (1937); Jones v. Jones, 48 Wash. 2d 862, 296 P.2d 1010, 54 A.L.R.2d 1403 (1956).

6 Watson v. Buck, 313 U.S. 387, 61 S. Ct. 962, 85 L. Ed. 1416, 136 A.L.R. 1426 (1941); Burlington & Summit Apartments v. Manolato, 233 Iowa 15, 7 N.W.2d 26, 144 A.L.R. 251 (1942).

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V. Interpretation

F. Consequences of Interpretation; Avoidance of Undesirable Consequences

§ 169. Potential litigation; insecurity; confusion or uncertainty

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 174, 212.2

In the interpretation of statutes, a court should be astute in avoiding a construction which may be productive of much litigation and insecurity,[1] or which would throw the meaning or administration of the law, or the forms of business, into hopeless confusion or uncertainty.[2] Thus, an interpretation should, if possible, be put upon the provisions of a law which will permit the officials having the responsibility for its administration to proceed in an orderly manner.[3]

Where the construction of a statute involves a choice between uncertainties, the lesser should be chosen.[4]

Footnotes

1 Garcia v. Allstate Ins. Co., 327 So. 2d 784 (Fla. Dist. Ct. App. 3d Dist. 1976).

2 Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 113 S. Ct. 2264, 124 L. Ed. 2d 539 (1993); Garcia v. Allstate Ins. Co., 327 So. 2d 784 (Fla. Dist. Ct. App. 3d Dist. 1976); State v. Cabrales, 118 Ohio St. 3d 54, 2008-Ohio-1625, 886 N.E.2d 181 (2008).

3 Tax Commission v. Lamprecht, 107 Ohio St. 535, 1 Ohio L. Abs. 404, 140 N.E. 333, 31 A.L.R. 985 (1923).

4 Burnet v. Guggenheim, 288 U.S. 280, 53 S. Ct. 369, 77 L. Ed. 748 (1933).

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V. Interpretation

G. Liberal or Strict Construction

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West's Key Number Digest

West's Key Number Digest, Statutes 235, 236, 238, 239, 241(1), 241(2), 243

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West's A.L.R. Digest, Statutes 235, 236, 238, 239, 241(1), 241(2), 243

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V. Interpretation

G. Liberal or Strict Construction

1. In General

§ 170. Overview; liberal construction, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235

In the interpretation of statutes, the application of particular rules or the attainment of particular desirable results or the avoidance of particular undesirable results may be accomplished by a liberal construction of some statutes and a strict construction of others.[1] Generally, a court will not give a statute a literal interpretation if it leads to absurd consequences that are contrary to the legislative intent.[2]

It is especially true of statutes entitled to a liberal construction that an interpretation should be applied which is within the reason[3] and spirit of the statute,[4] or the public policy which animates it,[5] rather than the strict letter thereof.[6] A statute entitled to a liberal construction should be favorably construed,[7] so as to give it, if possible, a beneficial operation,[8] and one which would tend to promote and effectuate justice,[9] in the interest of the public good,[10] and to avoid harsh[11] or incongruous results.[12] The courts should give freely and generously all the statute purports to give.[13] Words may be omitted, or supplied by implication, and sentences transformed, to render the statute a consistent whole and effectuate the legislative will.[14] The most comprehensive meaning of the terms employed should, if necessary, be adopted to accomplish the aims of the statute.[15] When a statute is to be liberally construed, the court may even carry it beyond the natural import of its words when essential to answer its purpose.[16] Thus, the statute should not be given a construction so technical[17] or narrow[18] as to defeat the beneficent purposes[19] or design of the statute[20] or the right granted by it.[21] It should be interpreted so as to advance the remedy[22] and suppress the mischief or evil intended to be remedied.[23]

Footnotes

1 Charleston & W.C. Ry. Co. v. Gosnell, 106 S.C. 84, 90 S.E. 264 (1916).

2 § 163.

3 Zappala v. Industrial Ins. Com'n, 82 Wash. 314, 144 P. 54 (1914).

4 Bidwell Coal Co. v. Davidson, 187 Iowa 809, 174 N.W. 592, 8 A.L.R. 1058 (1919).

5 Matlock v. Hollis, 153 Kan. 227, 109 P.2d 119, 132 A.L.R. 1316 (1941); New York City Council v. Goldwater, 284 N.Y. 296, 31 N.E.2d 31, 133 A.L.R. 728 (1940).

6 Paterson v. Wisener, 218 Ala. 137, 117 So. 663 (1928); Bidwell Coal Co. v. Davidson, 187 Iowa 809, 174 N.W. 592, 8 A.L.R. 1058 (1919).

7 Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913); Stewart v. State, 33 S.W.3d 785 (Tenn. 2000).

8 Victory Sparkler & Specialty Co. v. Francks, 147 Md. 368, 128 A. 635, 44 A.L.R. 363 (1925).

9 Chicago & N.W. Ry. Co. v. Moss, 210 Iowa 491, 231 N.W. 344, 71 A.L.R. 936 (1930); Withers v. Miller, 140 Kan. 123, 34 P.2d 110, 104 A.L.R. 692 (1934).

10 State v. Bunting, 71 Or. 259, 139 P. 731 (1914), aff'd, 243 U.S. 426, 37 S. Ct. 435, 61 L. Ed. 830 (1917).

11 International Mercantile Marine Co. v. Lowe, 93 F.2d 663, 115 A.L.R. 896 (C.C.A. 2d Cir. 1938).

12 International Mercantile Marine Co. v. Lowe, 93 F.2d 663, 115 A.L.R. 896 (C.C.A. 2d Cir. 1938); Fox Park Timber Co. v. Baker, 53 Wyo. 467, 84 P.2d 736, 120 A.L.R. 1020 (1938).

13 Becker Steel Co. of America v. Cummings, 296 U.S. 74, 56 S. Ct. 15, 80 L. Ed. 54 (1935); State ex rel. Connellsville By-Product Coal Co. v. Continental Coal Co., 117 W. Va. 447, 186 S.E. 119, 106 A.L.R. 83 (1936).

14 State v. Shevlin-Carpenter Co., 99 Minn. 158, 108 N.W. 935 (1906).

15 Schaefer v. Bernhardt, 76 Ohio St. 443, 81 N.E. 640 (1907).

16 State ex rel. City of Minneapolis v. St. Paul, M. & M.R. Co., 98 Minn. 380, 108 N.W. 261 (1906), aff'd, 214 U.S. 497, 29 S. Ct. 698, 53 L. Ed. 1060 (1909).

17 Wilson v. Brown-McDonald Co., 134 Neb. 211, 278 N.W. 254, 116 A.L.R. 702 (1938); State ex rel. Connellsville By-Product Coal Co. v. Continental Coal Co., 117 W. Va. 447, 186 S.E. 119, 106 A.L.R. 83 (1936).

18 Spiller v. Atchison, T. & S.F. Ry. Co., 253 U.S. 117, 40 S. Ct. 466, 64 L. Ed. 810 (1920); Meyer's Estate v. C.I.R., 200 F.2d 592 (5th Cir. 1952).

19 Wilson v. Brown-McDonald Co., 134 Neb. 211, 278 N.W. 254, 116 A.L.R. 702 (1938); Layne v. State, 23 Okla. Crim. 36, 212 P. 328 (1923).

20 Faulkner v. Solazzi, 79 Conn. 541, 65 A. 947 (1907).

21 Cincinnati Traction Co. v. Ruthman, 85 Ohio St. 62, 96 N.E. 1019 (1911).

22 Crowell v. Akin, 152 Ga. 126, 108 S.E. 791, 19 A.L.R. 51 (1921); Foster v. Congress Square Hotel Co., 128 Me. 50, 145 A. 400, 67 A.L.R. 239 (1929).

23 Crowell v. Akin, 152 Ga. 126, 108 S.E. 791, 19 A.L.R. 51 (1921); In re Davies, 168 N.Y. 89, 61 N.E. 118 (1901).

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V. Interpretation

G. Liberal or Strict Construction

1. In General

§ 171. Rules tending to limit liberal construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235

A court cannot liberally construe a statute with an unequivocal and definite meaning.[1] A liberal construction is subject to the principle that all rules of statutory construction are merely for the purpose of ascertaining the intention of the legislature as expressed in the statute.[2] It does not permit the courts to effectuate its own conception of right[3] by putting into a law that which the legislature never intended to be there.[4] The doctrine of liberal construction does not imply that the legislative mandate may be disregarded[5] or that an exception contained in a statute may be nullified.[6] Furthermore, a liberal construction does not authorize the courts to read into a statute something which does not come within the meaning of the language used,[7] or which unreasonably restricts[8] or enlarges or extends[9] the scope of the statute[10] to matters not within the intent of the law,[11] or beyond the field of its purpose.[12]

CUMULATIVE SUPPLEMENT

Cases:

Courts' job is to follow statutory text even if doing so will supposedly undercut a basic objective of the statute. Baker Botts L.L.P. v. ASARCO LLC, 135 S. Ct. 2158 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Wellington v. Mahoning Cty. Bd. of Elections, 117 Ohio St. 3d 143, 2008-Ohio-554, 882 N.E.2d 420 (2008).

2 Iowa Employment Sec. Commission v. Marshall County, 242 Iowa 1254, 49 N.W.2d 829 (1951); Seay v. Com., 152 Va. 982, 146 S.E. 198, 61 A.L.R. 997 (1929).

3 Claussen v. Brothers, 148 S.C. 1, 145 S.E. 539, 61 A.L.R. 826 (1928).

4 Dunbar v. Spratt-Snyder Co., 208 Iowa 490, 226 N.W. 22, 63 A.L.R. 1016 (1929); Claussen v. Brothers, 148 S.C. 1, 145 S.E. 539, 61 A.L.R. 826 (1928).

5 Keeney v. Beasman, 169 Md. 582, 182 A. 566, 103 A.L.R. 1515 (1936); State ex rel. Bartol v. Justice of Peace Court of Township of Stanford, in Judith Basin County, 102 Mont. 1, 55 P.2d 691 (1936).

6 Sullivan v. Storz, 156 Neb. 177, 55 N.W.2d 499, 34 A.L.R.2d 1142 (1952).

7 Iowa Employment Sec. Commission v. Marshall County, 242 Iowa 1254, 49 N.W.2d 829 (1951); Shaw v. U.S. Airways, Inc., 362 N.C. 457, 665 S.E.2d 449 (2008).

Liberal interpretation of a statute does not permit doing violence to the language in the statute. Wesco Distribution, Inc. v. Westport Group, Inc., 150 S.W.3d 553 (Tex. App. Austin 2004).

8 In re Adoption of M.S., 181 Cal. App. 4th 50, 103 Cal. Rptr. 3d 715 (3d Dist. 2010); City of Mayville v. Rosing, 19 N.D. 98, 123 N.W. 393 (1909).

9 In re Adoption of M.S., 181 Cal. App. 4th 50, 103 Cal. Rptr. 3d 715 (3d Dist. 2010); State ex rel. Kansas City Bridge Co. v. Terte, 345 Mo. 95, 131 S.W.2d 587, 124 A.L.R. 1331 (1939).

10 Doe v. Buccini Pollin Group, Inc., 201 Md. App. 409, 29 A.3d 999 (2011); State ex rel. Kansas City Bridge Co. v. Terte, 345 Mo. 95, 131 S.W.2d 587, 124 A.L.R. 1331 (1939).

11 Keeney v. Beasman, 169 Md. 582, 182 A. 566, 103 A.L.R. 1515 (1936); Elkins v. Microsoft Corp., 174 Vt. 328, 817 A.2d 9 (2002).

12 Brindley v. Meara, 209 Ind. 144, 198 N.E. 301, 101 A.L.R. 682 (1935); Kellar v. James, 63 W. Va. 139, 59 S.E. 939 (1907).

A liberal construction is not a license for the court to rewrite the statute in a manner that will defeat its overall purpose. DeSimone v. Coatesville Area School Dist., 248 F. Supp. 2d 387, 175 Ed. Law Rep. 249 (E.D. Pa. 2003).

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V. Interpretation

G. Liberal or Strict Construction

1. In General

§ 172. Strict construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235

A strict construction is a narrow construction[1] confining the operation of the statute to matters affirmatively,[2] or specifically pointed out[3] by its terms,[4] and to cases which fall fairly within its letter,[5] or the clear, plain, obvious, or natural import of the language used.[6] The statute may not be applied to situations or parties not fairly or clearly within its provisions.[7] Furthermore, a strict construction of a statute presumes nothing that is not expressed.[8] In the application of a strict construction, the courts refuse to enlarge or extend the law[9] to matters not necessarily[10] or unmistakably implied.[11] These rules prevail even though the court thinks that the legislature ought to have made the statute more comprehensive.[12]

CUMULATIVE SUPPLEMENT

Cases:

Strict construction means narrow construction and requires that nothing be taken as intended that is not clearly expressed; doctrine of strict construction requires court to use plain meaning of language employed. Lambert v. LQ Management, L.L.C., 2013 Ark. 114, 2013 Ark. App. 114, 426 S.W.3d 437 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Rutherford v. Mid-Delta Community Services, Inc., 102 Ark. App. 317, 285 S.W.3d 248 (2008); In re Hecht, 213 S.W.3d 547 (Tex. Spec. Ct. Rev. 2006); In re Detention of Coppin, 157 Wash. App. 537, 238 P.3d 1192 (Div. 1 2010), review denied, 170 Wash. 2d 1025, 249 P.3d 181 (2011).

2 Rogers v. Toccoa Power Co., 161 Ga. 524, 131 S.E. 517, 44 A.L.R. 534 (1926).

3 Majestic Household Utilities Corp. v. Stratton, 353 Ill. 86, 186 N.E. 522, 89 A.L.R. 852 (1933); Equitable Life Assur. Soc. of U.S. v. Hobbs, 154 Kan. 1, 114 P.2d 871, 135 A.L.R. 1234 (1941).

4 United States v. Resnick, 299 U.S. 207, 57 S. Ct. 126, 81 L. Ed. 127 (1936); Elliott v. North Carolina Psychology Bd., 348 N.C. 230, 498 S.E.2d 616 (1998).

5 U.S. v. Chemical Foundation, 272 U.S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926); Nay v. First Financial Bank, 2003 OK CIV APP 91, 79 P.3d 1124 (Div. 1 2003).

6 Caldwell v. U.S., 250 U.S. 14, 39 S. Ct. 397, 63 L. Ed. 816 (1919); Wallace v. West Fraser South, Inc., 365 Ark. 68, 225 S.W.3d 361 (2006).

7 United States v. Resnick, 299 U.S. 207, 57 S. Ct. 126, 81 L. Ed. 127 (1936); People v. Shakun, 251 N.Y. 107, 167 N.E. 187, 64 A.L.R. 1066 (1929).

8 Curt Bean Transport, Inc. v. Hill, 2009 Ark. App. 760, 348 S.W.3d 56 (2009); Bistline v. Bassett, 47 Idaho 66, 272 P. 696, 62 A.L.R. 323 (1928).

9 United States v. Resnick, 299 U.S. 207, 57 S. Ct. 126, 81 L. Ed. 127 (1936); Commissioner of Corporations and Taxation v. Morgan, 306 Mass. 305, 28 N.E.2d 217, 130 A.L.R. 402 (1940); Gutterson v. Pearson, 152 Minn. 482, 189 N.W. 458, 24 A.L.R. 519 (1922).

10 Walter v. Northern Ins. Co. of New York, 370 Ill. 283, 18 N.E.2d 906, 121 A.L.R. 244 (1938); Johnson Fruit Co. v. Story, 171 Neb. 310, 106 N.W.2d 182 (1960).

11 Johnson Fruit Co. v. Story, 171 Neb. 310, 106 N.W.2d 182 (1960); Nay v. First Financial Bank, 2003 OK CIV APP 91, 79 P.3d 1124 (Div. 1 2003); Moto-Pep, Inc. v. McGoldrick, 202 Tenn. 119, 303 S.W.2d 326 (1957).

12 U.S. v. Weitzel, 246 U.S. 533, 38 S. Ct. 381, 62 L. Ed. 872 (1918); Moto-Pep, Inc. v. McGoldrick, 202 Tenn. 119, 303 S.W.2d 326 (1957).

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V. Interpretation

G. Liberal or Strict Construction

1. In General

§ 173. Strict construction—Limitations upon strictness of construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235

The application of a rule of strict construction of statutes does not prevent the courts from calling to their aid all other rules as to interpretation and giving each its appropriate scope.[1] In the first place, the rule of strict construction comes into play only when the language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity.[2] Moreover, the rule of strict construction is subject to the principle that all rules of statutory construction are merely for the purpose of ascertaining the intention of the legislature as expressed in the statute.[3] As in the case of all statutes, such interpretation should be adopted as will have due regard for, be in harmony with, and give effect to the legislative intent.[4]

Although a strict construction is a narrow construction and the statute may not be extended by implication or inference, the construction should not be unduly technical, arbitrary, severe, artificial, or narrow.[5] The words used need not be given any meaning other than their full meaning[6] where such construction is in harmony with the context.[7] A strict construction permits the words to be read naturally.[8] A statute which is subject to the rule of strict construction is nevertheless entitled to a reasonable, sensible, and fair construction.[9] The courts should not render a statute nugatory, inoperative, or ineffectual but should interpret it as to give it an efficient operation.[10]

Footnotes

1 Braffith v. People of Virgin Islands, 26 F.2d 646 (C.C.A. 3d Cir. 1928); Williams v. State, 756 A.2d 349 (Del. 2000).

2 Osaka Shosen Kaisha Line v. U.S., 300 U.S. 98, 57 S. Ct. 356, 81 L. Ed. 532 (1937); Tax Appeal of Director of Taxation v. Medical Underwriters of California, 115 Haw. 180, 166 P.3d 353 (2007).

3 Seay v. Com., 152 Va. 982, 146 S.E. 198, 61 A.L.R. 997 (1929).

4 U.S. v. Raynor, 302 U.S. 540, 58 S. Ct. 353, 82 L. Ed. 413 (1938); Walters v. Bank of America Nat. Trust & Savings Ass'n, 9 Cal. 2d 46, 69 P.2d 839, 110 A.L.R. 1259 (1937).

5 Fasulo v. U.S., 272 U.S. 620, 47 S. Ct. 200, 71 L. Ed. 443 (1926); State v. Vause, 84 Ohio St. 207, 95 N.E. 742 (1911).

The United States Supreme Court has no authority to construe the language of a state statute more narrowly than the construction given by that state's highest court. City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67, 72 A.L.R.5th 665 (1999).

6 Donnelley v. U.S., 276 U.S. 505, 48 S. Ct. 400, 72 L. Ed. 676 (1928); Colcord v. Granzow, 1928 OK 211, 137 Okla. 194, 278 P. 654, 64 A.L.R. 699 (1928).

7 Gooch v. U.S., 297 U.S. 124, 56 S. Ct. 395, 80 L. Ed. 522 (1936); In re C., 43 Ohio Misc. 98, 72 Ohio Op. 2d 421, 334 N.E.2d 545 (C.P. 1975); State v. Johnson, 198 S.W.3d 795 (Tex. App. San Antonio 2006), petition for discretionary review granted, (Sept. 13, 2006) and judgment aff'd, 219 S.W.3d 386 (Tex. Crim. App. 2007).

8 U.S. v. Harris, 177 U.S. 305, 20 S. Ct. 609, 44 L. Ed. 780 (1900); In re C., 43 Ohio Misc. 98, 72 Ohio Op. 2d 421, 334 N.E.2d 545 (C.P. 1975).

9 U.S. v. Raynor, 302 U.S. 540, 58 S. Ct. 353, 82 L. Ed. 413 (1938); York Ice Machinery Corp. v. Kearney, 344 Pa. 659, 25 A.2d 179, 141 A.L.R. 1280 (1942).

10 Mills v. St. Clair County, 49 U.S. 569, 8 How. 569, 12 L. Ed. 1201, 1850 WL 6809 (1850); Walters v. Bank of America Nat. Trust & Savings Ass'n, 9 Cal. 2d 46, 69 P.2d 839, 110 A.L.R. 1259 (1937).

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V. Interpretation

G. Liberal or Strict Construction

1. In General

§ 174. Strict construction—Effect of purpose, spirit, and policy of statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235

That construction of a statute is favored which most fully promotes the policy and objects thereof.[1] Indeed, a statute subject to a strict construction is confined to its purpose[2] or the evil intended to be remedied.[3] To be within a statute subject to a strict construction, a case must be within the reason[4] and spirit of the statute,[5] as well as within the letter thereof.[6]

CUMULATIVE SUPPLEMENT

Cases:

While every statute's meaning is fixed at the time of enactment, new applications may arise in light of changes in the world. Wisconsin Central Ltd. v. U.S., 138 S. Ct. 2067 (2018).

Even if Congress did not foresee all applications of statute, that is no reason not to give statutory text a fair reading. Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Ash Sheep Co. v. U.S., 252 U.S. 159, 40 S. Ct. 241, 64 L. Ed. 507 (1920); Illinois Cent. R. Co. v. Hudson, 136 Tenn. 1, 188 S.W. 589, 2 A.L.R. 147 (1916).

2 U.S. v. McElvain, 272 U.S. 633, 47 S. Ct. 219, 71 L. Ed. 451 (1926); U.S. v. Chemical Foundation, 272 U.S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926); Coon v. City and County of Honolulu, 98 Haw. 233, 47 P.3d 348 (2002).

3 Psota v. Long Island R. Co., 246 N.Y. 388, 159 N.E. 180, 62 A.L.R. 1163 (1927); Strimple v. Parker Pen Co., 177 Wis. 111, 187 N.W. 1001 (1922).

4 Bistline v. Bassett, 47 Idaho 66, 272 P. 696, 62 A.L.R. 323 (1928); Bullington v. Lowe, 1923 OK 978, 94 Okla. 234, 221 P. 502 (1923).

5 U.S. v. Chemical Foundation, 272 U.S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926); Coon v. City and County of Honolulu, 98 Haw. 233, 47 P.3d 348 (2002); Nay v. First Financial Bank, 2003 OK CIV APP 91, 79 P.3d 1124 (Div. 1 2003).

6 Nay v. First Financial Bank, 2003 OK CIV APP 91, 79 P.3d 1124 (Div. 1 2003); State v. Richmond, 171 Tenn. 1, 100 S.W.2d 1 (1937).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 175. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235

Courts are generally inclined to give a liberal construction to statutes looked upon with favor,[1] while statutes creating a hardship should be strictly construed.[2] Although there is authority for the view that the fact that the requirements of a statute are mandatory does not preclude the application of a liberal construction thereto,[3] the view has also been followed that a mandatory statute should, as a general rule, be literally construed and strictly applied, and that in statutory proceedings, the statute must be strictly pursued, especially in regard to provisions which are designed to safeguard substantial rights.[4]

Observation:

Federal statutes that are intended to fill a void in local law enforcement should be construed broadly.[5]

Footnotes

1 Smith v. Townsend, 148 U.S. 490, 13 S. Ct. 634, 37 L. Ed. 533 (1893); Hall & Farley v. Alabama Terminal & Improvement Co., 143 Ala. 464, 39 So. 285 (1905).

2 Velten v. Carmack, 23 Or. 282, 31 P. 658 (1892).

3 Jennings v. Brown, 114 Cal. 307, 46 P. 77 (1896).

4 Biaett v. Phoenix Title & Trust Co., 70 Ariz. 164, 217 P.2d 923, 22 A.L.R.2d 615 (1950).

5 Moskal v. U.S., 498 U.S. 103, 111 S. Ct. 461, 112 L. Ed. 2d 449 (1990).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 176. Remedial statutes, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 236

It is a general rule of law that statutes which are remedial in nature are entitled to a liberal construction[1] in favor of the remedy provided by law[2] or in favor of those entitled to the benefits of the statute.[3] This is true of a curative statute having a remedial purpose,[4] or statutes seeking the correction of recognized errors and abuses,[5] remedying defects in earlier acts,[6] or implying an intention to reform or extend existing rights.[7] The rule also applies to statutes having for their design the simplification of procedure and the removal of technicalities in connection therewith.[8]

In the interpretation of remedial statutes, a special effort is made to avoid a technical construction of the language used[9] and to give it a fair construction[10] so as to promote justice.[11] The construction should be one which would be consistent with, and promote, preserve, and effect the object of the statute[12] so as effectually to meet the beneficial end in view,[13] and not one which would defeat the manifest purpose of the statute.[14] Remedial statutes, seeking the correction of recognized errors and abuses in introducing some new regulation for the advancement of the public welfare, should be construed with regard to the defects or evils in the former law sought to be cured by the new law and the remedy provided.[15] The interpretation should be one which tends to suppress the mischief,[16] defeat all evasions for the continuation thereof,[17] and advance or promote the remedy.[18] Doubts about the applicability of a remedial statute are resolved in favor of applying the statute.[19]

A remedial statute should be construed so as to afford all the relief within the power of the court which the language of the act indicates that the legislature intended to grant.[20] Exceptions or exclusions to a remedial law are narrowly construed.[21]

The courts may not read into a remedial statute something that is not within the manifest intention of the lawmaking body.[22] A liberal construction of a remedial statute does not authorize the court to place such judicial construction upon the language used as to effectuate its own conception of right, rather than the legislative intent,[23] or to depart from the plain and obvious meaning of the language used.[24] Also, a mandate to construe a statute liberally in light of its underlying remedial purpose does not mean that courts can impose on the statute a construction not reasonably supported by the statutory language.[25]

Footnotes

1 Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424, 59 S. Ct. 262, 83 L. Ed. 265 (1939); Long v. Tommy Hilfiger U.S.A., Inc., 671 F.3d 371 (3d Cir. 2012); Layzer v. Leavitt, 770 F. Supp. 2d 579 (S.D. N.Y. 2011); In re Esther V., 2011-NMSC-005, 149 N.M. 315, 248 P.3d 863 (2011).
As to liberal or strict construction of remedial statutes in derogation of the common law, generally, see § 183.

2 Bean v. Office of Child Support Enforcement, 340 Ark. 286, 9 S.W.3d 520 (2000); Golf Channel v. Jenkins, 752 So. 2d 561 (Fla. 2000).

3 Kentucky Ins. Guar. Ass'n v. Jeffers ex rel. Jeffers, 13 S.W.3d 606 (Ky. 2000); Miller v. City of Shreveport, 90 So. 2d 565 (La. Ct. App. 2d Cir. 1956).

4 Miller v. City of Shreveport, 90 So. 2d 565 (La. Ct. App. 2d Cir. 1956); In re W.J.B., 294 S.W.3d 873 (Tex. App. Beaumont 2009), rule 53.7(f) motion dismissed, (Jan. 14, 2010).

5 Miller v. City of Shreveport, 90 So. 2d 565 (La. Ct. App. 2d Cir. 1956); Peet v. Mills, 76 Wash. 437, 136 P. 685 (1913).

6 Kentucky Ins. Guar. Ass'n v. Jeffers ex rel. Jeffers, 13 S.W.3d 606 (Ky. 2000); Tyrone W. v. Danielle R., 129 Md. App. 260, 741 A.2d 553 (1999), judgment aff'd, 359 Md. 396, 754 A.2d 389 (2000).

7 Miller v. City of Shreveport, 90 So. 2d 565 (La. Ct. App. 2d Cir. 1956).

8 Lynch v. Armstrong, 90 W. Va. 98, 111 S.E. 489 (1922); Charmley v. Charmley, 125 Wis. 297, 103 N.W. 1106 (1905).

9 Sun Ins. Co. of N.Y. v. Aetna Ins. Co. of Hartford, Conn., 169 Neb. 94, 98 N.W.2d 692 (1959); State ex rel. Connellsville By-Product Coal Co. v. Continental Coal Co., 117 W. Va. 447, 186 S.E. 119, 106 A.L.R. 83 (1936).

10 Sun Ins. Co. of N.Y. v. Aetna Ins. Co. of Hartford, Conn., 169 Neb. 94, 98 N.W.2d 692 (1959); People ex rel. New York Hotel & Restaurant Co. v. Barker, 140 N.Y. 437, 35 N.E. 657 (1893).

11 Kentucky Ins. Guar. Ass'n v. Jeffers ex rel. Jeffers, 13 S.W.3d 606 (Ky. 2000); Sun Ins. Co. of N.Y. v. Aetna Ins. Co. of Hartford, Conn., 169 Neb. 94, 98 N.W.2d 692 (1959).

12 Becker Steel Co. of America v. Cummings, 296 U.S. 74, 56 S. Ct. 15, 80 L. Ed. 54 (1935); Clark v. Scarpelli, 91 Ohio St. 3d 271, 2001-Ohio-39, 744 N.E.2d 719 (2001).

13 Dickey v. Raisin Proration Zone No. 1, 24 Cal. 2d 796, 151 P.2d 505, 157 A.L.R. 324 (1944); Sun Ins. Co. of N.Y. v. Aetna Ins. Co. of Hartford, Conn., 169 Neb. 94, 98 N.W.2d 692 (1959).

14 Sun Ins. Co. of N.Y. v. Aetna Ins. Co. of Hartford, Conn., 169 Neb. 94, 98 N.W.2d 692 (1959); Layne v. State, 23 Okla. Crim. 36, 212 P. 328 (1923).

15 Railroad Commission of Texas v. Texas & N.O.R. Co., 42 S.W.2d 1091 (Tex. Civ. App. Austin 1931), writ refused, (Mar. 9, 1932); Peet v. Mills, 76 Wash. 437, 136 P. 685 (1913).

16 Bean v. Office of Child Support Enforcement, 340 Ark. 286, 9 S.W.3d 520 (2000); Leader v. Cords, 182 Cal. App. 4th 1588, 107 Cal. Rptr. 3d 505 (4th Dist. 2010), review denied, (June 9, 2010); MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc., 2012 WI 15, 338 Wis. 2d 647, 809 N.W.2d 857 (2012).

17 Scarborough v. Atlantic Coast Line R. Co., 178 F.2d 253, 15 A.L.R.2d 491 (4th Cir. 1949); State v. Lipkin, 169 N.C. 265, 84 S.E. 340 (1915).

18 Edward T. Byrd & Co., Inc. v. WPSC Venture I, 66 So. 3d 979 (Fla. Dist. Ct. App. 5th Dist. 2011); Brown v. State, 947 N.E.2d 486 (Ind. Ct. App. 2011), transfer denied, 950 N.E.2d 1213 (Ind. 2011); MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc., 2012 WI 15, 338 Wis. 2d 647, 809 N.W.2d 857 (2012).

19 Utility Service Co., Inc. v. Department of Labor and Indus. Relations, 331 S.W.3d 654 (Mo. 2011).

20 Logan v. Davis, 233 U.S. 613, 34 S. Ct. 685, 58 L. Ed. 1121 (1914); Wilhoit v. State, 2009 OK 83, 226 P.3d 682 (Okla. 2009), as corrected, (Nov. 16, 2009).

21 Utility Service Co., Inc. v. Department of Labor and Indus. Relations, 331 S.W.3d 654 (Mo. 2011).

22 Cedar Park Cemetery Ass'n v. Cooper, 408 Ill. 79, 96 N.E.2d 482 (1951); Krueger v. Zeman Const. Co., 781 N.W.2d 858 (Minn. 2010).

23 Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886, 52 A.L.R.2d 875 (1955); Claussen v. Brothers, 148 S.C. 1, 145 S.E. 539, 61 A.L.R. 826 (1928).

24 Citrus County v. Halls River Development, Inc., 8 So. 3d 413 (Fla. Dist. Ct. App. 5th Dist. 2009); The Arundel Corp. v. Marie, 383 Md. 489, 860 A.2d 886 (2004); Romo v. Payne, 334 S.W.3d 364 (Tex. App. El Paso 2011).

25 Meyer v. Sprint Spectrum L.P., 45 Cal. 4th 634, 88 Cal. Rptr. 3d 859, 200 P.3d 295 (2009).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 177. Statutes advancing public welfare or promoting humane policy; safety legislation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 235, 236

A liberal construction is generally given to statutes introducing some new regulation for the advancement of the public welfare,[1] or affecting the general welfare or public policy of a state,[2] or having for their end the promotion of important and beneficial public objects.[3] This is true of statutes necessary for the protection of the health,[4] morals, and safety of society,[5] or for the relief of the stress of economic insecurity,[6] or for the protection of the traveling public,[7] or for the protection of life and property.[8]

A liberal construction is also generally accorded statutes which are regarded by the courts as progressive, humanitarian, and beneficial,[9] or which are grounded on principles of a humane public policy,[10] or which have a benevolent or beneficent purpose.[11] These principles are applicable even though the legislation may be in derogation of the common law.[12]

On the other hand, the humane spirit of a statute does not warrant its extension beyond its legitimate scope.[13]

Safety legislation is to be liberally construed to effectuate the legislature's purpose.[14]

Footnotes

1 Harris v. City of Fort Smith, 359 Ark. 355, 197 S.W.3d 461 (2004); City of St. Louis v. Carpenter, 341 S.W.2d 786, 87 A.L.R.2d 1219 (Mo. 1961); State ex rel. Board of Ed. of Worthington Exempted School Dist. v. Board of Ed. of Columbus City School Dist., 172 Ohio St. 237, 15 Ohio Op. 2d 403, 175 N.E.2d 91 (1961).

2 Ideal Farms Drainage Dist. v. Certain Lands, 154 Fla. 554, 19 So. 2d 234 (1944).

3 U. S. v. Lee, 131 F.2d 464, 143 A.L.R. 1451 (C.C.A. 7th Cir. 1942); Grapski v. City of Alachua, 31 So. 3d 193 (Fla. Dist. Ct. App. 1st Dist. 2010), review denied, 47 So. 3d 1288 (Fla. 2010).

4 Southern Cal. Gas Co. v. South Coast Air Quality Management Dist., 200 Cal. App. 4th 251, 133 Cal. Rptr. 3d 7 (2d Dist. 2011), as modified, (Nov. 15, 2011) and as modified on denial of reh'g, (Nov. 22, 2011) and review denied, (Jan. 18, 2012); Heffernan v. Missoula City Council, 2011 MT 91, 360 Mont. 207, 255 P.3d 80 (2011).

5 Whirlpool Corp. v. Marshall, 445 U.S. 1, 100 S. Ct. 883, 63 L. Ed. 2d 154 (1980); Smith v. People, 51 Colo. 270, 117 P. 612 (1911); Heffernan v. Missoula City Council, 2011 MT 91, 360 Mont. 207, 255 P.3d 80 (2011).

6 Godsol v. Michigan Unemployment Compensation Commission, 302 Mich. 652, 5 N.W.2d 519, 142 A.L.R. 910 (1942).

7 Southern Pac. Co. v. Robinson, 132 Cal. 408, 64 P. 572 (1901); State ex rel. City of Minneapolis v. St. Paul, M. & M.R. Co., 98 Minn. 380, 108 N.W. 261 (1906), aff'd, 214 U.S. 497, 29 S. Ct. 698, 53 L. Ed. 1060 (1909).

8 City of St. Louis v. Carpenter, 341 S.W.2d 786, 87 A.L.R.2d 1219 (Mo. 1961).

9 Dunbar v. Spratt-Snyder Co., 208 Iowa 490, 226 N.W. 22, 63 A.L.R. 1016 (1929); Esterly v. Broadway Garage Co., 87 Mont. 64, 285 P. 172 (1930); In re Hook, 95 Vt. 497, 115 A. 730, 19 A.L.R. 610 (1922).

10 W.J. Newman Co. v. Industrial Commission, 353 Ill. 190, 187 N.E. 137, 88 A.L.R. 1188 (1933); Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576, 28 A.L.R.2d 272 (1950).

11 Patterson v. Peaslee-Gaulbert Co., 174 Ky. 47, 191 S.W. 670 (1917); Cote H. v. Eighth Judicial Dist. Court ex rel. County of Clark, 124 Nev. 36, 175 P.3d 906 (2008).

12 Lake Shore & M.S.R. Co. v. Benson, 85 Ohio St. 215, 97 N.E. 417 (1912).

13 Nichols v. St. Louis & S. F. R. Co., 227 Ala. 592, 151 So. 347, 90 A.L.R. 842 (1933).

14 Whirlpool Corp. v. Marshall, 445 U.S. 1, 100 S. Ct. 883, 63 L. Ed. 2d 154 (1980).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 178. Statutes in derogation of rights

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 239

A rule of strict construction is generally applied to the interpretation of statutes in derogation of rights,[1] either of the public[2] or of individuals,[3] or in derogation of their natural rights.[4] In this regard, generally, statutes which impinge on fundamental rights must be narrowly construed.[5]

The rule of strict construction prevails in cases of statutes which are in derogation of contract rights,[6] or which impose restrictions on the conduct of business,[7] or which are restrictive of a free economy.[8] The scope of such statutes is not to be extended beyond the usual meaning of their terms.[9]

Footnotes

1 U.S. v. St. Paul, M. & M. Ry. Co., 247 U.S. 310, 38 S. Ct. 525, 62 L. Ed. 1130 (1918); Martin v. General Am. Cas. Co., 226 La. 481, 76 So. 2d 537, 46 A.L.R.2d 1178 (1954); People v. Cuevas, 67 A.D.2d 219, 414 N.Y.S.2d 520 (1st Dep't 1979).

2 U.S. v. St. Paul, M. & M. Ry. Co., 247 U.S. 310, 38 S. Ct. 525, 62 L. Ed. 1130 (1918).

3 Cumberland Tel. & Tel. Co. v. United Elec. Ry. Co., 93 Tenn. 492, 29 S.W. 104 (1894).

4 Credit v. Richland Parish School Bd., 61 So. 3d 861, 267 Ed. Law Rep. 969 (La. Ct. App. 2d Cir. 2011), writ granted, 64 So. 3d 233 (La. 2011) and aff'd in part, rev'd in part on other grounds, 2011-1003 La. 3/13/12, 2012 WL 896357 (La. 2012); In re Jackson, 55 Nev. 174, 28 P.2d 125, 91 A.L.R. 1381 (1934).

5 People v. Cuevas, 67 A.D.2d 219, 414 N.Y.S.2d 520 (1st Dep't 1979).

6 Sims v. Everett, 113 Ark. 198, 168 S.W. 559 (1914); Boston Ice Co. v. Boston & M. R. R., 77 N.H. 6, 86 A. 356 (1913).

7 Clymer v. Zane, 128 Ohio St. 359, 191 N.E. 123, 93 A.L.R. 1245 (1934).

8 U.S. v. Masonite Corporation, 316 U.S. 265, 62 S. Ct. 1070, 86 L. Ed. 1461 (1942).

9 Clymer v. Zane, 128 Ohio St. 359, 191 N.E. 123, 93 A.L.R. 1245 (1934).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 179. Statutes in derogation of rights—Rights regarding private property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 239

Statutes are generally subject to a strict construction where they interfere with private property rights or are in derogation of rights of individual ownership,[1] such as statutes regulating or restraining the disposition of property[2] or divesting title against the owner's will.[3] In such cases, all doubts are resolved in favor of the property owner.[4] Under these rules, an intention to confiscate private property will not be raised by inference and construction from provisions of law which have ample field for other operation in effecting a purpose clearly indicated and declared.[5]

Footnotes

1 Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 167 U.S. 479, 17 S. Ct. 896, 42 L. Ed. 243 (1897); McMillin v. State, 158 Colo. 183, 405 P.2d 672 (1965); Stanfield v. Glynn County, 280 Ga. 785, 631 S.E.2d 374 (2006); In re CVPS/Verizon Act 250 Land Use Permit Numbers 7C1252 and 7C0677-2, 186 Vt. 289, 2009 VT 71, 980 A.2d 256 (2009).

2 Whitlow v. Jennings, 40 Haw. 523, 1954 WL 7976 (1954); Orrell v. Bay Mfg. Co., 83 Miss. 800, 36 So. 561 (1904).

3 Western Union Tel. Co. v. Pennsylvania R. Co., 195 U.S. 540, 25 S. Ct. 133, 49 L. Ed. 312 (1904); State Through Dept. of Highways v. Bradford, 242 La. 1095, 141 So. 2d 378 (1961); Holly Springs Realty Group, LLC v. BancorpSouth Bank, 69 So. 3d 19 (Miss. Ct. App. 2010), cert. denied, 69 So. 3d 767 (Miss. 2011).

4 Parkside Cemetery Ass'n v. Cleveland, Bedford & Geauga Lake Traction Co., 93 Ohio St. 161, 112 N.E. 596 (1915).

5 Street v. Lincoln Safe Deposit Co., 254 U.S. 88, 41 S. Ct. 31, 65 L. Ed. 151, 10 A.L.R. 1548 (1920).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 180. Statutes in derogation of equitable principles or remedies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 239

A statute is not to be construed in derogation of well-established principles of equity unless so required by express words or by necessary implication, and then only to the extent clearly indicated.[1] Furthermore, equitable considerations lie on the side of a strict construction of a statutory provision that proposes to bar an equitable remedy.[2]

Footnotes

1 Putz v. Putz, 645 N.W.2d 343 (Minn. 2002).

2 U.S. v. St. Paul, M. & M. Ry. Co., 247 U.S. 310, 38 S. Ct. 525, 62 L. Ed. 1130 (1918).
Statutes that are in derogation of an equitable remedy are to be strictly construed so as not to supplant, impair, or restrict equity's normal function as an aid to complete justice. Rosenberg v. Heritage Renovations, LLC, 685 N.W.2d 320 (Minn. 2004).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 181. Statutes in derogation of common law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 239

Generally, statutes in derogation of the common law are to be strictly construed.[1] Under this rule, legislation creating a liability where no liability existed at common law should be construed most favorably to the person or entity subjected to the liability and against the claimant for damages.[2]

On the other hand, there is some authority for the view that in some cases, depending upon the character of the law,[3] statutes in derogation of the common law are not subject to a strict construction.[4] The Uniform Statute and Rule Construction Act does not apply the presumption that a civil statute in derogation of the common law is construed strictly.[5]

Footnotes

1 Thompson v. Thompson, 218 U.S. 611, 31 S. Ct. 111, 54 L. Ed. 1180 (1910); Stewart v. Town of Watertown, 303 Conn. 699, 38 A.3d 72 (2012); Alisha C. v. Jeremy C., 283 Neb. 340, 808 N.W.2d 875 (2012); Antosz v. Allain, 2012 WL 592902 (N.H. 2012); Happ v. Creek Pointe Homeowner's Ass'n, 717 S.E.2d 401 (N.C. Ct. App. 2011).
A statute in derogation of the common law must be strictly construed, and no intent to change that law will be found unless it appears with clarity. Potter v. Washington State Patrol, 165 Wash. 2d 67, 196 P.3d 691 (2008).
As to the common law as an aid in the construction of statutes, generally, see §§ 92, 93.
As to liberal or strict construction of remedial statutes in derogation of the common law, generally, see § 183.

2 Nowak v. City of Country Club Hills, 2011 IL 111838, 354 Ill. Dec. 825, 958 N.E.2d 1021 (Ill. 2011); Prewitt v. Walker, 231 Miss. 860, 97 So. 2d 514 (1957); Miglino v. Bally Total Fitness of Greater New York, Inc., 92 A.D.3d 148, 937 N.Y.S.2d 63 (2d Dep't 2011).

3 Henley v. Myers, 76 Kan. 723, 93 P. 168 (1907), aff'd, 215 U.S. 373, 30 S. Ct. 148, 54 L. Ed. 240 (1910); Rozell v. Harmon, 103 Mo. 339, 15 S.W. 432 (1891).

As to the construction of remedial statutes in derogation of the common law, see § 183.

As to a liberal construction of statutes in derogation of the common law, but promoting a humane policy, see § 177.

4 Seibert v. Seibert, 170 Iowa 561, 153 N.W. 160 (1915); Freeman v. State Bd. of Medical Examiners, 1915 OK 1004, 54 Okla. 531, 154 P. 56 (1915).

5 Unif. Statute and Rule Construction Act § 18(c).

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G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 182. Statutes in derogation of common law—Manner of applying strict construction rule; extent of application

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 239

When applying the rule of strict construction to statutes in derogation of the common law, it is not presumed that the legislature intended to abrogate or modify a rule of the common law on the subject any further than that which is expressly declared or clearly indicated,[1] and the courts are inclined not to extend such statutes,[2] by construction[3] or implication,[4] any further than the language of the statute absolutely requires.[5] The statute will not be construed to confer or enlarge any rights not clearly given.[6]

CUMULATIVE SUPPLEMENT

Cases:

A statute does not need to expressly say, "this is intended to preempt the common law," in order for it to do so; the actual canon of statutory construction is that statutes in derogation of the common law must be limited strictly to the meaning of the language employed, and not extended beyond the plain and explicit terms of the statute. Holland v. Caviness, 292 Ga. 332, 737 S.E.2d 669 (2013).

Statutes which effect a change in the common law or take away a common-law right should be strictly construed, and a construction which restricts or removes a common-law right should not be adopted unless the plain words of the statute compel it. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

Statutes which effect a change in the common law or take away a common-law right should be strictly construed, and a construction which restricts or removes a common-law right should not be adopted unless the plain words of the statute compel it. In re 2007 Administration of Appropriations of Waters of Niobrara River, 288 Neb. 497, 851 N.W.2d 640 (2014).

It is disfavored to interpret statutes so as to overrule the common law. O'Donnell v. Erie County, 35 N.Y.3d 14, 124 N.Y.S.3d 12, 146 N.E.3d 1171 (2020).

[END OF SUPPLEMENT]

Footnotes

1 Isbrandtsen Co. v. Johnson, 343 U.S. 779, 72 S. Ct. 1011, 96 L. Ed. 1294 (1952); Essex Ins. Co. v. Zota, 985 So. 2d 1036 (Fla. 2008); O'Sullivan v. Shaw, 431 Mass. 201, 726 N.E.2d 951 (2000); Mitchem v. Counts, 259 Va. 179, 523 S.E.2d 246 (2000).

2 Mitchell v. St. Maxent's Lessee, 71 U.S. 237, 18 L. Ed. 326, 1866 WL 9469 (1866); Ryals v. St. Mary-Corwin Regional Medical Center, 10 P.3d 654 (Colo. 2000); Murphy v. Mancari's Chrysler Plymouth, Inc., 381 Ill. App. 3d 768, 320 Ill. Dec. 425, 887 N.E.2d 569 (1st Dist. 2008); Dykes v. Scotts Bluff County Agr. Soc., Inc., 260 Neb. 375, 617 N.W.2d 817 (2000).

3 Ryals v. St. Mary-Corwin Regional Medical Center, 10 P.3d 654 (Colo. 2000); Hickey v. Commissioner of Correction, 82 Conn. App. 25, 842 A.2d 606 (2004); Jan Paul Fruiterman, M.D. and Associates, P.C. v. Waziri, 259 Va. 540, 525 S.E.2d 552 (2000).

4 Williams v. Manchester, 228 Ill. 2d 404, 320 Ill. Dec. 784, 888 N.E.2d 1 (2008); Walters v. Leech, 279 Mich. App. 707, 761 N.W.2d 143 (2008); Phillips v. Larry's Drive-In Pharmacy, Inc., 220 W. Va. 484, 647 S.E.2d 920 (2007).

5 Mitchell v. St. Maxent's Lessee, 71 U.S. 237, 18 L. Ed. 326, 1866 WL 9469 (1866); Ryals v. St. Mary-Corwin Regional Medical Center, 10 P.3d 654 (Colo. 2000); Essex Ins. Co. v. Zota, 985 So. 2d 1036 (Fla. 2008); U.S. Filter Distribution Group, Inc. v. Barnett, 273 Ga. 254, 538 S.E.2d 739 (2000).

6 Ryals v. St. Mary-Corwin Regional Medical Center, 10 P.3d 654 (Colo. 2000); Hickey v. Commissioner of Correction, 82 Conn. App. 25, 842 A.2d 606 (2004); Cohen v. W.B. Associates, Inc., 380 N.J. Super. 436, 882 A.2d 456 (Law Div. 2005).

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2. Particular Kinds of Statutes

§ 183. Remedial statutes in derogation of common law

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West's Key Number Digest

West's Key Number Digest, Statutes 236, 239

Remedial statutes in derogation of the common law are generally entitled to a liberal construction.[1] However, there is also authority for the rule that, in determining what persons come within a remedial statute in derogation of the common law, the rule of liberal construction does not apply.[2] Furthermore, the view has been followed that where a statute is both remedial and in derogation of the common law, it should be construed strictly as regards the question of whether it does modify the common law and liberally in its application.[3]

Footnotes

1 Negro v. Metas, 110 Conn. App. 485, 955 A.2d 599 (2008); Wagner, Vaughan, McLaughlin & Brennan, P.A. v. Kennedy Law Group, 64 So. 3d 1187 (Fla. 2011); Cardinale v. City of Atlanta, 12 Fulton County D. Rep. 339, 2012 WL 360544 (Ga. 2012); Henley v. Myers, 76 Kan. 723, 93 P. 168 (1907), aff'd, 215 U.S. 373, 30 S. Ct. 148, 54 L. Ed. 240 (1910).
Retaliatory discharge statutes have been repeatedly termed remedial in nature; such statutes are normally broadly construed. Branche v. Airtran Airways, Inc., 314 F. Supp. 2d 1194 (M.D. Fla. 2004).

2 JPMorgan Chase Bank, N.A. v. Earth Foods, Inc., 238 Ill. 2d 455, 345 Ill. Dec. 644, 939 N.E.2d 487 (2010).

3 Gallup v. Bailey, 46 N.M. 344, 129 P.2d 56, 142 A.L.R. 1441 (1942).

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V. Interpretation

G. Liberal or Strict Construction

2. Particular Kinds of Statutes

§ 184. Statutes containing remedial and penal provisions

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West's Key Number Digest

West's Key Number Digest, Statutes 236, 241(1), 243

Some statutes are declared to be remedial, as well as penal,[1] and therefore to be entitled to a liberal construction[2] to suppress the mischief[3] and to effect the object of the statute.[4] On the other hand, some courts have followed the view that a statute which is penal as well as remedial in its nature must be construed with at least a reasonable degree of strictness with respect to including anything beyond the immediate scope and object of the statute, even though within its spirit, so that nothing may be added to the act by inference or intendment.[5] Another rule which has received some support is that where a statute contains remedial and penal features, as respects the former it is entitled to a liberal construction but as to the latter it must be strictly construed.[6]

Footnotes

1 § 9.

2 First Nat. Bank v. Davis, 135 Ga. 687, 70 S.E. 246 (1911).
As to liberal or strict construction of penal statutes, generally, see §§ 185 to 189.

3 Yalenezian v. City of Boston, 238 Mass. 538, 131 N.E. 220 (1921).

4 First Nat. Bank v. Davis, 135 Ga. 687, 70 S.E. 246 (1911).
As to the liberal or strict construction of penal statutes, generally, see §§ 185 to 189.

5 Acme Fireworks Corp. v. Bibb, 6 Ill. 2d 112, 127 N.E.2d 444 (1955); Railroad Commission of Texas v. Texas & N.O.R. Co., 42 S.W.2d 1091 (Tex. Civ. App. Austin 1931), writ refused, (Mar. 9, 1932).

6 Com. v. Wilgus, 2009 PA Super 116, 975 A.2d 1183 (2009), appeal granted, 605 Pa. 313, 989 A.2d 340 (2010) and order rev'd on other grounds, 2012 WL 987791 (Pa. 2012); State v. Carter, 827 A.2d 636 (R.I.

2003); S.C. Johnson & Son, Inc. v. Morris, 322 Wis. 2d 766, 2010 WI App 6, 779 N.W.2d 19 (Ct. App. 2009), review denied, 2010 WI 110, 327 Wis. 2d 461, 787 N.W.2d 843 (2010).

Probation statutes are highly remedial and should be liberally construed to provide trial courts a valuable tool for rehabilitation of criminals. Downey v. Com., 59 Va. App. 13, 716 S.E.2d 472 (2011).

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V. Interpretation

G. Liberal or Strict Construction

3. Penal Statutes

a. In General: Strict or Liberal Construction

§ 185. Generally

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1), 241(2)

Statutes imposing a penalty, or penal statutes, are generally subject to a strict construction.[1] More accurately, it may be said that such laws are to be interpreted strictly against the State and liberally in favor of the accused.[2] The rule is founded on the tenderness of the law for the rights of individuals; its object is to establish a certain rule, by conformity to which mankind would be safe and the discretion of the court limited.[3] A further policy behind this canon of construction is to provide a standard which, if followed, will avoid penalty.[4] The measure of punishment and the mischief to be remedied are also elements entering into the construction of a criminal statute.[5] However, there are cases in which a liberal construction is applied to a penal statute[6] or in which, at least, a strict or rigid construction is not applied.[7]

Generally, however, the effect of a penal statute cannot be extended beyond the plain meaning of the language used;[8] penal statutes cannot be extended by implication[9] or construction, or be made to embrace cases which are not within their letter and spirit.[10] A criminal statute cannot be expanded beyond those circumstances intended by the legislature to be within the scope of the statute.[11] Thus, for example, courts are not empowered to extend the terms of a criminal provision to cover conduct which is not included within the definition of the crime.[12]

Repeal of a criminal procedural rule by implication is disfavored.[13]

CUMULATIVE SUPPLEMENT

Cases:

In construing criminal statutes under Illinois law, nothing should be taken by intendment or implication beyond the obvious or literal meaning of the statute. Miller UK Ltd. v. Caterpillar, Inc., 17 F. Supp. 3d 711 (N.D. Ill. 2014).

A court cannot construe a federal criminal statute on the assumption that the Government will use it responsibly. Marinello v. U.S., 138 S. Ct. 1101 (2018).

A criminal statute cannot be construed on the assumption that the Government will use it responsibly. McDonnell v. U.S., 136 S. Ct. 2355 (2016).

The Supreme Court avoids reading statutes to dramatically intrude upon traditional state criminal jurisdiction in the absence of a clear indication that they do. Bond v. U.S., 134 S. Ct. 2077 (2014).

Courts cannot, through construction of a statute, create a criminal offense that is not in express terms created by the legislature. Arms v. State, 2015 Ark. 364, 471 S.W.3d 637 (2015).

The canon in favor of strict construction of criminal statutes is not an obstinate rule which overrides common sense and evident statutory purpose; the canon is satisfied if the statutory language is given fair meaning in accord with the manifest intent of the general assembly. State v. Erskine, 2015-Ohio-710, 29 N.E.3d 272 (Ohio Ct. App. 4th Dist. Highland County 2015).

[END OF SUPPLEMENT]

Footnotes

1 Federal Maritime Com'n v. Seatrain Line, Inc., 411 U.S. 726, 93 S. Ct. 1773, 36 L. Ed. 2d 620 (1973); Beulah v. State, 344 Ark. 528, 42 S.W.3d 461 (2001); Mayes v. State, 744 N.E.2d 390 (Ind. 2001); Sullivan v. Wallace, 51 So. 3d 702 (La. 2010); State v. Cleary, 712 S.E.2d 722 (N.C. Ct. App. 2011).
Statutes which are in derogation of the common law and which are penal in nature are to be strictly construed. Elliott v. North Carolina Psychology Bd., 348 N.C. 230, 498 S.E.2d 616 (1998).

2 Jones v. U.S., 529 U.S. 848, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000); State v. McCullah, 787 N.W.2d 90 (Iowa 2010); State v. Jackson, 291 Kan. 34, 238 P.3d 246 (2010); State v. Rue, 2001 ND 92, 626 N.W.2d 681 (N.D. 2001).
Penal statutes are to be strictly construed against the Commonwealth and in favor of a citizen's liberty. Fullwood v. Com., 279 Va. 531, 689 S.E.2d 742 (2010).

3 U.S. v. Harris, 177 U.S. 305, 20 S. Ct. 609, 44 L. Ed. 780 (1900); Caudill v. State, 224 Ind. 531, 69 N.E.2d 549 (1946); State v. Carr, 761 So. 2d 1271 (La. 2000).

4 State v. Chippewa Cable Co., 48 Wis. 2d 341, 180 N.W.2d 714 (1970).

5 Hershorn v. People, 108 Colo. 43, 113 P.2d 680, 139 A.L.R. 297 (1941).

6 State v. Tacey, 102 Vt. 439, 150 A. 68, 68 A.L.R. 1353 (1930); German v. Wisconsin Dept. of Transp., Div. of State Patrol, 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50 (2000).

7 U.S. v. Ryan, 284 U.S. 167, 52 S. Ct. 65, 76 L. Ed. 224 (1931); Doering v. Walters, 80 Ind. App. 194, 140 N.E. 74 (1923); Illinois Cent. R. Co. v. Hudson, 136 Tenn. 1, 188 S.W. 589, 2 A.L.R. 147 (1916).

8 State v. Ashby, 1999 ME 188, 743 A.2d 1254 (Me. 1999).

9 § 189.

10 Com. Dept. of Motor Vehicles v. Athey, 261 Va. 385, 542 S.E.2d 764 (2001).

11 State v. Meyers, 799 N.W.2d 132 (Iowa 2011).

12 State v. Myers, 760 So. 2d 310 (La. 2000).

13 U.S. v. Vonn, 535 U.S. 55, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002).

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V. Interpretation

G. Liberal or Strict Construction

3. Penal Statutes

a. In General: Strict or Liberal Construction

§ 186. Types of statutes subject to strict construction as penal statutes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 241(1), 241(2)

The rule of strict construction of penal statutes generally applies to statutes that impose punishment for the commission of a crime.[1] However, the rule is also applied to statutes not strictly criminal but of that nature.[2] Thus, for example, strict construction may be applied to statutes providing for the revocation of,[3] or authorizing sanctions or penalties against, a license;[4] statutes which impose penalties or forfeitures;[5] statutes that provide for a recovery of damages beyond just compensation to the party injured;[6] statutes which authorize punishment for contempt;[7] or statutes providing for penalties and attorney's fees.[8] Gambling statutes are penal statutes and, as such, are to be strictly construed.[9]

As to the construction of statutes defining misdemeanors, greater latitude is exercised by the courts than in the case of statutes which deal with greater offenses and which more immediately affect individuals rather than the general public.[10] In this regard, in some cases, the rule which requires criminal statutes to be construed strictly has been applied only to statutes of a highly penal character and not to mere misdemeanors.[11]

Footnotes

1 U.S. v. Giles, 300 U.S. 41, 57 S. Ct. 340, 81 L. Ed. 493 (1937); State v. Laborde, 202 La. 59, 11 So. 2d 404, 144 A.L.R. 1376 (1942); Smith v. First Judicial Dist. Court In and For Churchill County, 75 Nev. 526, 347 P.2d 526, 79 A.L.R.2d 283 (1959).

As to a determination of the penal character of a statute, generally, see §§ 8, 9.

2 Trans-Continental Mut. Ins. Co. v. Harrison, 262 Ala. 373, 78 So. 2d 917, 51 A.L.R.2d 917 (1955); State Bar v. Sexton, 64 Nev. 459, 184 P.2d 356 (1947).

3 Kany v. Florida Engineers Management Corp., 948 So. 2d 948 (Fla. Dist. Ct. App. 5th Dist. 2007); Schireson v. Shafer, 354 Pa. 458, 47 A.2d 665, 165 A.L.R. 1133 (1946).

4 Beckett v. Department of Financial Services, 982 So. 2d 94 (Fla. Dist. Ct. App. 1st Dist. 2008).

5 Am. Jur. 2d, Forfeitures and Penalties § 8.

6 Atlantic Title Ins. Co. v. Aegis Funding Corp., 287 Ga. App. 392, 651 S.E.2d 507 (2007); Cleveland, C., C. & St. L. Ry. Co. v. Wells, 65 Ohio St. 313, 62 N.E. 332 (1901).

7 Langenberg v. Decker, 131 Ind. 471, 31 N.E. 190 (1892).

As to contempt, generally, see Am. Jur. 2d, Contempt §§ 1, 2.

8 Jimenez v. Chicago Title Ins. Co., 310 Ga. App. 9, 712 S.E.2d 531 (2011); Alexander v. Centanni, 2011-783 La. App. 4 Cir. 11/16/11, 2011 WL 5579004 (La. Ct. App. 4th Cir. 2011).

9 American Amusements Co. v. Nebraska Dept. of Revenue, 282 Neb. 908, 807 N.W.2d 492 (2011).

10 Wigington v. Mid-Continent Royalty Co., 130 Kan. 785, 288 P. 749 (1930); State v. Maurer, 255 Mo. 152, 164 S.W. 551 (1914).

11 Kelley v. State, 233 Ind. 294, 119 N.E.2d 322 (1954); Evelyn v. Com., 46 Va. App. 618, 621 S.E.2d 130 (2005).

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G. Liberal or Strict Construction

3. Penal Statutes

a. In General: Strict or Liberal Construction

§ 187. General limitations on application of strict construction rule

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

The rule of strict construction of criminal statutes cannot provide a substitute for common sense, precedent, and legislative history.[1] The construction of a penal statute should not be unduly technical, arbitrary, severe, artificial, or narrow.[2] In this regard, while penal statutes are to be strictly construed,[3] they need not be given an unnecessarily narrow meaning in disregard of the obvious legislative purpose and intent.[4] Furthermore, no rule of construction requires that a penal statute be strained and distorted to exclude conduct clearly intended to be within its scope,[5] and the words used in a penal statute need not be given their narrowest meaning[6] in complete disregard of the intent of the legislature.[7] In short, although criminal statutes are to be strictly construed in favor of the defendant, the courts are not authorized to interpret them so as to emasculate the statutes.[8] However, where the language of a penal statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation.[9]

Footnotes

1 U.S. v. Standard Oil Co., 384 U.S. 224, 86 S. Ct. 1427, 16 L. Ed. 2d 492 (1966); Ankrom v. State, 2011 WL 3781258 (Ala. Crim. App. 2011); People v. Manzo, 138 Cal. Rptr. 3d 16, 270 P.3d 711 (Cal. 2012).

2 Kordel v. U.S., 335 U.S. 345, 69 S. Ct. 106, 93 L. Ed. 52 (1948); Wesley v. Com., 190 Va. 268, 56 S.E.2d 362 (1949).

3 § 185.

4 Statezny v. State, 2001 WY 22, 18 P.3d 641 (Wyo. 2001).

5 Salinas v. U.S., 522 U.S. 52, 118 S. Ct. 469, 139 L. Ed. 2d 352 (1997); Pitts v. Com., 58 Va. App. 741, 716 S.E.2d 137 (2011).

6 Singer v. U.S., 323 U.S. 338, 65 S. Ct. 282, 89 L. Ed. 285 (1945); State v. Hansen, 805 N.W.2d 915 (Minn. Ct. App. 2011); In re N.T., 715 S.E.2d 183 (N.C. Ct. App. 2011).

7 Huddleston v. U.S., 415 U.S. 814, 94 S. Ct. 1262, 39 L. Ed. 2d 782 (1974).

8 Heitzman v. First Nat. Bank, 83 Colo. 476, 266 P. 213 (1928); State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

9 Lewis v. U.S., 445 U.S. 55, 100 S. Ct. 915, 63 L. Ed. 2d 198 (1980); Close v. Thomas, 653 F.3d 970 (9th Cir. 2011), cert. denied, 2012 WL 137254 (U.S. 2012); Rollf v. State, 12 Fulton County D. Rep. 880, 2012 WL 687873 (Ga. Ct. App. 2012); Cosmopolitan Engineering Group, Inc. v. Ondeo Degremont, Inc., 159 Wash. 2d 292, 149 P.3d 666 (2006).

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G. Liberal or Strict Construction

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a. In General: Strict or Liberal Construction

§ 188. Ambiguous statutes; rule of lenity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 241(1), 241(2)

Penal statutes are construed with such strictness as to safeguard the rights of the defendant.[1] In interpreting criminal statutes, any ambiguities must be construed most favorably to the defendant.[2] Alternatively, as sometimes stated, when the language of a penal law is reasonably susceptible of two interpretations, a court will construe the law as favorably to criminal defendants as reasonably permitted by the statutory language and circumstances of the application of the particular law in issue; this protects the individual against arbitrary discretion by officials and judges and guards against judicial usurpation of the legislative function which would result from enforcement of penalties when the legislative branch did not clearly prescribe them.[3] Stated another way, the rule has been said to be that a criminal statute must be strictly construed in favor of the accused, and any reasonable doubt about its meaning is decided in favor of anyone subjected to the criminal statute.[4]

Furthermore, it has been said that, under the "rule of lenity," a criminal statute is construed in favor of lenity toward an accused in situations in which a reasonable doubt persists about the statute's intended scope even after resort to the statute's language, structure, legislative history, and motivating policies.[5] The rule of lenity fosters the constitutional due-process principle that no individual be forced to speculate, at peril of indictment, whether his or her conduct is prohibited.[6] The rule of lenity leads a court to favor a more lenient interpretation of a criminal statute when, after consulting traditional canons of statutory construction, the court is left with an ambiguous statute.[7] The rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in a statute imposing a criminal penalty, such that the court must simply guess as to what was intended.[8] The touchstone of the rule being statutory ambiguity,[9] it therefore follows that ambiguity concerning the ambit of criminal statutes should generally be resolved in favor of lenity.[10] The rule of lenity in statutory construction

applies where courts are faced with genuine ambiguity, but the rule is not to be used in complete disregard of the purpose of the legislature.[11] Furthermore, the view has been followed that the rule of lenity is a tie-breaking principle of relevance when two reasonable interpretations of the same provision stand in relative equipoise.[12]

Observation:

The doctrine that ambiguity or uncertainty in a criminal statute must be construed in favor of the defendant is only an aid to construction and cannot be invoked until the statute is shown to be ambiguous or uncertain as applied to the particular defendant.[13]

The rule of lenity may apply when a statute with criminal sanctions is applied in a noncriminal context.[14]

When the legislature allows two conflicting statutory provisions to coexist, the rule of lenity applies, and the courts must follow the statutory provision more favorable to the accused.[15] When there are two rational readings of a criminal statute, one harsher than the other, courts are to choose the harsher only when Congress has spoken in clear and definite language.[16]

CUMULATIVE SUPPLEMENT

Cases:

Rule of lenity requires that Supreme Court liberally interpret an ambiguous criminal law in favor of the accused, but the principle applies only after Court has used every interpretive tool at its disposal and a reasonable doubt persists. Douglas v. State, 327 P.3d 492, 130 Nev. Adv. Op. No. 31 (Nev. 2014).

The rule of lenity, for construing criminal statutes, applies only when, after consulting traditional canons of statutory construction, the court is left with an ambiguous statute. Shular v. United States, 140 S. Ct. 779 (2020).

The rule of lenity teaches that ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor. United States v. Davis, 139 S. Ct. 2319 (2019).

The rule of lenity applies if at the end of the process of construing what Congress has expressed, there is a grievous ambiguity or uncertainty in the statute. Shaw v. U.S., 137 S. Ct. 462 (2016).

The rule of lenity applies only when a criminal statute contains a grievous ambiguity or uncertainty, and only if, after seizing everything from which aid can be derived, the court can make no more than a guess as to what Congress intended. Ocasio v. U.S., 136 S. Ct. 1423 (2016).

The rule of lenity applies to resolve ambiguity in favor of the defendant only at the end of the process of construing what Congress has expressed when the ordinary canons of statutory construction have revealed no satisfactory construction. Lockhart v. U.S., 136 S. Ct. 958 (2016).

Ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity. (Per Justice Ginsburg, with three Justices concurring and one Justice concurring in the judgment.) Yates v. U.S., 135 S. Ct. 1074 (2015).

Rule of lenity applies only if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the court must simply guess as to what Congress intended. Abramski v. U.S., 134 S. Ct. 2259 (2014).

Rule of lenity applies only if, after using usual tools of statutory construction, court is left with grievous ambiguity or uncertainty in the statute. Robers v. U.S., 134 S. Ct. 1854 (2014).

A court's construction of a criminal statute must be guided by the need for fair warning; but the rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the court must simply guess as to what Congress intended. U.S. v. Castleman, 134 S. Ct. 1405 (2014).

Especially in the interpretation of a criminal statute subject to the rule of lenity, courts cannot give the text a meaning that is different from its ordinary, accepted meaning, and that disfavors the defendant. Burrage v. U.S., 134 S. Ct. 881 (2014).

The rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Supreme Court must simply guess as to what Congress intended. Maracich v. Spears, 133 S. Ct. 2191 (2013).

Only where the language or history of the statute is uncertain after looking to the particular statutory language, the design of the statute as a whole, and to its object and policy, does the rule of lenity serve to give further guidance. Maracich v. Spears, 133 S. Ct. 2191 (2013).

The rule of lenity is not applicable unless there is a grievous ambiguity or uncertainty in the language and structure of the statute, such that even after a court has seized every thing from which aid can be derived, it is still left with an ambiguous statute. Soto-Hernandez v. Holder, 729 F.3d 1 (1st Cir. 2013).

The "rule of lenity," which requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them, and which applies to sentencing as well as substantive provisions, requires Congress to speak clearly so that courts need not play the part of a mind reader when interpreting a criminal statute. U.S. v. Cano-Flores, 796 F.3d 83 (D.C. Cir. 2015).

Where a criminal statute suffers from a grievous ambiguity, the law should be interpreted to avoid imposing unintended penalties; however, most statutes are technically ambiguous, and the mere possibility of articulating a narrower construction does not by itself make the rule of lenity applicable. Craigslist Inc. v. 3Taps Inc., 964 F. Supp. 2d 1178 (N.D. Cal. 2013).

The rule of lenity did not prevent defendant from being charged with four counts of using and carrying a firearm during and in relation to a crime of violence relating to a single Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, where each count was tied to a separate charged crime of violence, armed robbery, involving the separate use of a firearm, each of which constituted a predicate offense under RICO. 18 U.S.C.A. § 924(c); 18 U.S.C.A. § 1962(d). United States v. Morrow, 102 F. Supp. 3d 232 (D.D.C. 2015).

Rule of lenity applies to a penal statute only if the court can do no more than guess what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule. People v. Boyce, 59 Cal. 4th 672, 175 Cal. Rptr. 3d 481, 330 P.3d 812 (2014).

Application of rule of lenity was not limited to cases where criminal conduct was punishable both as misdemeanor or felony, but also applied to different punishments for identity fraud arising out of theft and use of victim's credit card and committing

financial transaction card theft, both felonies, if statutes punished same offense; disapproving *Shabazz v. State,* 273 Ga.App. 389, 615 S.E.2d 214, *Rollf v. State,* 314 Ga.App. 596, 724 S.E.2d 881, *Fyfe v. State,* 305 Ga.App. 322, 699 S.E.2d 546, and *Falagian v. State,* 300 Ga.App. 187, 684 S.E.2d 340. McNair v. State, 745 S.E.2d 646 (Ga. 2013).

"Rule of lenity," requiring courts to adopt one of multiple interpretations of a statute that is most favorable to the defendant, applies only when a court must interpret a criminal statute with two reasonable and sensible interpretations. State v. Collins, 362 P.3d 1098 (Kan. 2015).

When interpreting a criminal statute, a court is guided by two interrelated rules of statutory construction, the rule of lenity and the rule of strict construction; pursuant to each of these rules, any ambiguity left unresolved by a strict construction of the statute must be resolved in the defendant's favor. State v. Lowden, 2014 ME 29, 87 A.3d 694 (Me. 2014).

Court will not interpret a criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what the legislature intended; this statutory construction principle applies, however, only when the statute is ambiguous as to whether the legislature intended to impose multiple punishments. Alexis v. State, 437 Md. 457, 87 A.3d 1243 (2014).

Where a defendant is convicted twice under the same statute, Supreme Judicial Court endeavors to examine the statute and ask what unit of prosecution was intended by the Legislature as the punishable act; this inquiry is informed by the language and purpose of the statute, as well as the rule of lenity, which requires Court to resolve any ambiguities in the defendant's favor. U.S.C.A. Const.Amend. 5. Com. v. Bolden, 470 Mass. 274, 21 N.E.3d 150 (2014).

If two constructions of a criminal statute are plausible, the one more favorable to defendant should be adopted in accordance with the rule of lenity. People v. Golb, 23 N.Y.3d 455, 991 N.Y.S.2d 792, 15 N.E.3d 805 (2014).

When a question of interpretation arises as to whether conduct is criminal or not, the court construes the statute in the light most favorable to the defendant. State v. Stegall, 2013 ND 49, 828 N.W.2d 526 (N.D. 2013).

[END OF SUPPLEMENT]

Footnotes

1 In re Zerbe, 60 Cal. 2d 666, 36 Cal. Rptr. 286, 388 P.2d 182, 10 A.L.R.3d 840 (1964); People v. Ahearn, 196 N.Y. 221, 89 N.E. 930 (1909).

2 U.S. v. Hanjuan Jin, 2012 WL 400681 (N.D. Ill. 2012); Bei Bei Shuai v. State, 2012 WL 394030 (Ind. Ct. App. 2012); State v. Breaux, 273 P.3d 447 (Wash. Ct. App. Div. 1 2012).

3 People v. Arias, 45 Cal. 4th 169, 85 Cal. Rptr. 3d 1, 195 P.3d 103 (2008); State v. Chubbuck, 2012 WL 716136 (Fla. Dist. Ct. App. 4th Dist. 2012); State v. Breaux, 273 P.3d 447 (Wash. Ct. App. Div. 1 2012).

4 State v. Berriozabal, 291 Kan. 568, 243 P.3d 352 (2010); Saunders v. Com., 281 Va. 448, 706 S.E.2d 350 (2011).

5 Moskal v. U.S., 498 U.S. 103, 111 S. Ct. 461, 112 L. Ed. 2d 449 (1990).
When the statutory language is clear, in interpreting a criminal statute, there is no need to examine the statutory purpose, legislative history, or the rule of lenity. Boyle v. U.S., 556 U.S. 938, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009).

6 U.S. v. Bustillos-Pena, 612 F.3d 863 (5th Cir. 2010).

7 DePierre v. U.S., 131 S. Ct. 2225, 180 L. Ed. 2d 114 (2011); Kasten v. Saint-Gobain Performance Plastics Corp., 131 S. Ct. 1325, 179 L. Ed. 2d 379 (2011); Burgess v. U.S., 553 U.S. 124, 128 S. Ct. 1572, 170 L. Ed. 2d 478, 30 A.L.R. Fed. 2d 737 (2008).

8 Barber v. Thomas, 130 S. Ct. 2499, 177 L. Ed. 2d 1 (2010); People v. Manzo, 138 Cal. Rptr. 3d 16, 270 P.3d 711 (Cal. 2012).

9 Abbott v. U.S., 131 S. Ct. 18, 178 L. Ed. 2d 348 (2010); Burgess v. U.S., 553 U.S. 124, 128 S. Ct. 1572, 170 L. Ed. 2d 478, 30 A.L.R. Fed. 2d 737 (2008); U.S. v. Sarwari, 669 F.3d 401 (4th Cir. 2012).

10 Skilling v. U.S., 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010); State v. Hormann, 805 N.W.2d 883 (Minn. Ct. App. 2011), review denied, (Jan. 17, 2012).

Ambiguity concerning the ambit of a criminal statute, including whether consecutive sentences are authorized for felony murder and for the underlying felony, should be resolved in favor of lenity. Whalen v. U.S., 445 U.S. 684, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980).

"Rule of lenity" entitles the accused to the lesser of two penalties where the same conduct would support either a felony or misdemeanor conviction. Diaz v. State, 296 Ga. App. 589, 676 S.E.2d 252 (2009).

11 Perrin v. U. S., 444 U.S. 37, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979).

The rule of lenity operates to resolve statutory ambiguities, absent legislative intent to the contrary, in favor of a criminal defendant. State v. Breaux, 273 P.3d 447 (Wash. Ct. App. Div. 1 2012).

12 People v. Manzo, 138 Cal. Rptr. 3d 16, 270 P.3d 711 (Cal. 2012).

13 People v. Alday, 10 Cal. 3d 392, 110 Cal. Rptr. 617, 515 P.2d 1169 (1973); Rollf v. State, 12 Fulton County D. Rep. 880, 2012 WL 687873 (Ga. Ct. App. 2012).

14 Kasten v. Saint-Gobain Performance Plastics Corp., 131 S. Ct. 1325, 179 L. Ed. 2d 379 (2011).

15 State v. Turner, 293 Kan. 1085, 272 P.3d 19 (2012).

16 Scheidler v. National Organization for Women, Inc., 537 U.S. 393, 123 S. Ct. 1057, 154 L. Ed. 2d 991, 188 A.L.R. Fed. 741 (2003).

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§ 189. Implications and inferences

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

Penal statutes cannot to be extended by implication.[1] However, where a statute prescribes penalties for a specified act, the penalties necessarily imply a prohibition and make the thing prohibited unlawful although no express prohibition is contained in the statute.[2]

The maxim expressio unius est exclusio alterius has been regarded as particularly applicable to statutes defining crimes so that where a statute defining an offense designates one class of persons as subject to its penalty, all other persons are deemed to be exempted therefrom.[3] Similarly, where an offense is defined by statute and its application to enumerated conditions prescribed, it is implied that it will not apply to other conditions not enumerated.[4]

CUMULATIVE SUPPLEMENT

Cases:

No person is to be made subject to penal statutes by implication and all doubts concerning their interpretation are to predominate in favor of the accused. Ex parte Ankrom, 152 So. 3d 397 (Ala. 2013), cert. denied, 135 S. Ct. 50, 190 L. Ed. 2d 53 (2014).

[END OF SUPPLEMENT]

Footnotes

1 Bei Bei Shuai v. State, 2012 WL 394030 (Ind. Ct. App. 2012); Hines v. Com., 59 Va. App. 567, 721 S.E.2d 792 (2012); Rodgers v. State, 2011 WY 158, 265 P.3d 235 (Wyo. 2011).

A court must construe penal statutes strictly so that a criminal offense is not created by inference or implication. State v. Tarmey, 2000 ME 23, 755 A.2d 482 (Me. 2000).

When interpreting a criminal statute that does not explicitly reach the conduct in question, the Supreme Court is reluctant to base an expansive reading on inferences drawn from subjective and variable understandings. Williams v. U. S., 458 U.S. 279, 102 S. Ct. 3088, 73 L. Ed. 2d 767, 34 U.C.C. Rep. Serv. 385 (1982).

2 People v. Maki, 245 Mich. 455, 223 N.W. 70 (1929).

3 Curtis v. State, 102 Ga. App. 790, 118 S.E.2d 264 (1960); State v. Associates Inv. Co., 136 Ohio St. 456, 17 Ohio Op. 29, 26 N.E.2d 457, 129 A.L.R. 1074 (1940).

As to the doctrine of expressio unius exclusio alterius, generally, see §§ 120, 121.

4 Curtis v. State, 102 Ga. App. 790, 118 S.E.2d 264 (1960).

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§ 190. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

The general rule that a penal statute must be strictly construed[1] does not prevent the courts from calling to their aid all of the other rules of construction and giving each its appropriate scope.[2] This is true of the general rules that, in the construction of a statute, the courts take into consideration the meaning naturally attaching to the words used from the context and prefer that meaning which best harmonizes with the context;[3] that general words in a statute following a designation of particular subjects or classes of persons are restricted by the particular designations;[4] that legislation should be given, insofar as the language permits, a common-sensical meaning;[5] that a construction is to be avoided which will overturn long established principles of law;[6] that a statute should be so interpreted, if possible, as to avoid inconsistency;[7] and that every portion of an act should be given its proper effect.[8]

CUMULATIVE SUPPLEMENT

Cases:

Whether the government interprets a criminal statute too broadly or too narrowly, the courts have an obligation to correct its error. Abramski v. U.S., 134 S. Ct. 2259 (2014).

When a statutory term is not defined, the court, when engaging in statutory construction, applies the familiar rule of statutory construction that guides it to give the words their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose. Com. v. St. Louis, 473 Mass. 350, 42 N.E.3d 601 (2015).

[END OF SUPPLEMENT]

Footnotes

1 § 185.

2 Braffith v. People of Virgin Islands, 26 F.2d 646 (C.C.A. 3d Cir. 1928); State v. Firemen's Ins. Co. of Newark, N.J., 164 S.C. 313, 162 S.E. 334 (1931).

3 State v. Myers, 760 So. 2d 310 (La. 2000).

4 State v. Russell, 185 Miss. 13, 187 So. 540 (1939).
When elements of a criminal offense are listed in a series, the rules of statutory construction require the general phrase to be construed as restricted to elements similar to the specific elements listed. Com. v. Zubiel, 456 Mass. 27, 921 N.E.2d 78 (2010).

5 U.S. v. Universal C. I. T. Credit Corp., 344 U.S. 218, 73 S. Ct. 227, 97 L. Ed. 260 (1952).
The words in criminal statutes, because they affect the general public and are written by lay legislatures, are interpreted in accordance with common understanding. State v. Severe, 307 S.W.3d 640 (Mo. 2010).

6 State v. Orth, 79 Ohio St. 130, 86 N.E. 476 (1908).

7 Jean v. Nelson, 472 U.S. 846, 105 S. Ct. 2992, 86 L. Ed. 2d 664 (1985); People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

8 U.S. v. Wells, 519 U.S. 482, 117 S. Ct. 921, 137 L. Ed. 2d 107 (1997); State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969 (1908).

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§ 191. Legislative intent and purpose as controlling factor

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

The rule that the primary object in the construction of a statute is to ascertain the legislative intent,[1] to be gathered from the language used, is as applicable to penal statutes as it is to statutes generally.[2] Such statutes, like all other statutes, should be so interpreted as to be in harmony with, preserve and effectuate the manifest intent of the legislature, and an interpretation should be avoided which would operate to defeat the manifest intent of the legislature.[3]

Similarly, the rule that penal statutes are to be strictly construed does not prevent the consideration of the general purpose of the legislature,[4] and it does not require the rejection of that sense of the words used which best harmonizes with the design of the statute.[5] To the contrary, such construction is favored which tends most fully to promote the object of the statute.[6]

CUMULATIVE SUPPLEMENT

Cases:

Because the constitutional structure leaves local criminal activity primarily to the States, the Supreme Court has generally declined to read federal law as intruding on that responsibility, unless Congress has clearly indicated that the law should have such reach. Bond v. U.S., 134 S. Ct. 2077 (2014).

[END OF SUPPLEMENT]

Footnotes

1 § 59.

2 Hagar v. State, 341 Ark. 633, 19 S.W.3d 16 (2000); State v. Hall, 270 Kan. 194, 14 P.3d 404 (2000); Hightower v. Detroit Edison Co., 262 Mich. 1, 247 N.W. 97, 86 A.L.R. 509 (1933).

3 U.S. v. Brown, 333 U.S. 18, 68 S. Ct. 376, 92 L. Ed. 442 (1948); People v. Revell, 372 Ill. App. 3d 981, 311 Ill. Dec. 318, 868 N.E.2d 318 (4th Dist. 2007); State v. Henning, 289 Kan. 136, 209 P.3d 711 (2009); State v. Kumar, 58 So. 3d 544 (La. Ct. App. 2d Cir. 2011); People v. Wilkens, 267 Mich. App. 728, 705 N.W.2d 728 (2005).

4 U.S. v. Universal C. I. T. Credit Corp., 344 U.S. 218, 73 S. Ct. 227, 97 L. Ed. 260 (1952); People v. Manzo, 138 Cal. Rptr. 3d 16, 270 P.3d 711 (Cal. 2012); Bei Bei Shuai v. State, 2012 WL 394030 (Ind. Ct. App. 2012); American Amusements Co. v. Nebraska Dept. of Revenue, 282 Neb. 908, 807 N.W.2d 492 (2011).
As to the purpose of the statute as an aid, generally, applicable to construction, see § 70.

5 Angelini v. Court of Common Pleas In and For New Castle County, 58 Del. 84, 205 A.2d 174 (1964); State v. Prevo, 44 Haw. 665, 44 Haw. 686, 361 P.2d 1044 (1961).

6 Ash Sheep Co. v. U.S., 252 U.S. 159, 40 S. Ct. 241, 64 L. Ed. 507 (1920).

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§ 192. Spirit and policy

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

Legislative policy may be taken into consideration in the interpretation of an ambiguous penal statute.[1] In such case, construction is favored which tends most fully to promote such policy.[2] Moreover, to be within a penal statute, a case must be within the spirit of the statute,[3] as well as within the letter thereof. However, a penal statute will not be construed to include anything beyond its letter even though it is within its spirit.[4]

CUMULATIVE SUPPLEMENT

Cases:

In sum, Supreme Court's interpretation of a penal statute will be either the only reasonable interpretation of the plain language, or, if there is no single reasonable interpretation of the plain language, then whichever interpretation is clearly established by statutory construction; or, if there is no such clearly established interpretation, then whichever reasonable and justifiable interpretation is most favorable to the defendant. State v. Evans, 298 P.3d 724 (Wash. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Donnelley v. U.S., 276 U.S. 505, 48 S. Ct. 400, 72 L. Ed. 676 (1928).
As to policy and spirit as aids, generally, applicable to the construction of statutes, see §§ 68, 69.

2 Ash Sheep Co. v. U.S., 252 U.S. 159, 40 S. Ct. 241, 64 L. Ed. 507 (1920); Illinois Cent. R. Co. v. Hudson, 136 Tenn. 1, 188 S.W. 589, 2 A.L.R. 147 (1916).

3 U.S. v. Chemical Foundation, 272 U.S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926); Starr v. State, 928 N.E.2d 876 (Ind. Ct. App. 2010), transfer denied, 940 N.E.2d 828 (Ind. 2010); Rhynes v. EMC Mortg. Corp., 2007 OK CIV APP 82, 168 P.3d 251 (Div. 3 2007); Startin v. Com., 281 Va. 374, 706 S.E.2d 873 (2011).

4 Starr v. Brou, 8 So. 3d 674 (La. Ct. App. 5th Cir. 2009), writ not considered, 5 So. 3d 152 (La. 2009); State v. Hansen, 805 N.W.2d 915 (Minn. Ct. App. 2011); State v. Richmond, 171 Tenn. 1, 100 S.W.2d 1 (1937).

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§ 193. Adherence to or departure from ordinary, literal, or technical meaning

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

The rule of strict construction of penal statutes generally requires that such statutes be construed literally or according to the letter.[1] Such statutes are also subject to the general rule of statutory construction that where a contrary intent does not appear, words and phrases used therein are taken in their ordinary acceptation.[2] The canon that penal statutes are to be strictly construed is not an inexorable command to override common sense and evident statutory purpose, and does not require that such a statute be given its narrowest meaning, but it is sufficient if the words are given their fair meaning in accord with the evident intent of the legislative body.[3]

The rule that in the construction of a statute involving the use of a word, the popular meaning of which is unsettled and fluctuating and hard to be ascertained, the court should adhere to the limitation and definite sense to which long established legal usage has restricted it is particularly applicable in the case of a penal statute[4] as is the rule that where words are used in a statute that have both a popular and a trade or technical meaning, and as used in a statute they have reference to a trade or profession, these words in construing the statute should be given their meaning as understood by the trade or profession to which they apply.[5]

CUMULATIVE SUPPLEMENT

Cases:

The Supreme Court interprets criminal statutes, like other statutes, in a manner consistent with ordinary English usage. Nichols v. U.S., 136 S. Ct. 1113 (2016).

[END OF SUPPLEMENT]

Footnotes

1 Barber v. Gonzales, 347 U.S. 637, 74 S. Ct. 822, 98 L. Ed. 1009 (1954); Wallace & Sons v. Walsh, 125 N.Y. 26, 25 N.E. 1076 (1890).
As to adherence to or departure from the ordinary or literal meaning of terms, generally, see §§ 115 to 117.

2 U.S. v. P. Koenig Coal Co., 270 U.S. 512, 46 S. Ct. 392, 70 L. Ed. 709 (1926); Foster v. State, 273 Ga. 555, 544 S.E.2d 153 (2001); Clymer v. Zane, 128 Ohio St. 359, 191 N.E. 123, 93 A.L.R. 1245 (1934).

3 U.S. v. Cook, 384 U.S. 257, 86 S. Ct. 1412, 16 L. Ed. 2d 516 (1966); State v. West, 202 N.C. App. 479, 689 S.E.2d 216 (2010); Dechert LLP v. Com., 606 Pa. 334, 998 A.2d 575 (2010).

4 B.F. Avery & Sons v. McClure, 94 Miss. 172, 47 So. 901 (1909).
As to the construction of words of legal import, generally, see § 143.

5 Katzman v. Commonwealth, 140 Ky. 124, 130 S.W. 990 (1910).
As to the construction of technical terms, generally, see § 142.

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§ 194. Mischief to be prevented or remedied

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

The mischief at which a penal statute is aimed may not be given the same consideration in its interpretation as is permissible in the case of statutes not subject to a strict construction.[1] In the interpretation of a penal statute, care must be observed not to extend the statute to offenses not embraced within its language merely because they involve the same mischief which the statute aims to suppress.[2] On the other hand, these rules do not mean that a court in construing a penal statute is required to shut its eyes to notorious mischiefs which it was intended to suppress.[3] Thus, there are cases in which the reasons for the statute,[4] or the evil sought to be avoided,[5] and the remedy incorporated in the law for accomplishing this purpose, may be considered.[6] However, the statute may not be extended beyond the evil intended to be remedied.[7]

Footnotes

1 U.S. v. Wiltberger, 18 U.S. 76, 5 L. Ed. 37, 1820 WL 2133 (1820); State v. Lewis, 141 S.C. 207, 139 S.E. 386 (1927).
As to the mischief to be prevented or remedied as an aid in the construction of statutes, generally, see § 71.

2 U.S. v. Chase, 135 U.S. 255, 10 S. Ct. 756, 34 L. Ed. 117 (1890); Glover v. State, 179 Ind. 459, 101 N.E. 629 (1913); State v. Lewis, 141 S.C. 207, 139 S.E. 386 (1927).

3 Holy Trinity Church v. U.S., 143 U.S. 457, 12 S. Ct. 511, 36 L. Ed. 226 (1892); Railroad Commission of Texas v. Texas & N.O.R. Co., 42 S.W.2d 1091 (Tex. Civ. App. Austin 1931), writ refused, (Mar. 9, 1932).

4 Osgood v. Central Vermont R. Co., 77 Vt. 334, 60 A. 137 (1905).

5 Atlantic Coast Line R. Co. v. State, 135 Ga. 545, 69 S.E. 725 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914); American Amusements Co. v. Nebraska Dept. of Revenue, 282 Neb. 908, 807 N.W.2d 492 (2011); State v. Morales, 2010-NMSC-026, 148 N.M. 305, 236 P.3d 24 (2010); Barnett v. State, 2011 OK CR 28, 263 P.3d 959 (Okla. Crim. App. 2011), on reh'g on other grounds, 2012 OK CR 2, 271 P.3d 80 (Okla. Crim. App. 2012).

6 Atlantic Coast Line R. Co. v. State, 135 Ga. 545, 69 S.E. 725 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914); State v. Decker, 261 Neb. 382, 622 N.W.2d 903 (2001).

7 Sondheim v. Gilbert, 117 Ind. 71, 18 N.E. 687 (1888).

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§ 195. Orderly parts

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

The general rules as to resort to the title of a statute as an aid in the interpretation thereof[1] have been applied to statutes dealing with crimes.[2] In this respect, the scope and extent of a statute which plainly forbids the commission of definite acts cannot be restricted by its title to include such acts as are preparatory to the commission of another and distinct offense.[3]

Footnotes

1 § 99

2 U.S. v. Briggs, 50 U.S. 351, 9 How. 351, 13 L. Ed. 170, 1850 WL 6884 (1850); Cohn v. People, 149 Ill. 486, 37 N.E. 60 (1894); State v. Bolden, 107 La. 116, 31 So. 393 (1902).

3 Com. v. Tilley, 306 Mass. 412, 28 N.E.2d 245, 129 A.L.R. 381 (1940).

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§ 196. Provisions in pari materia

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

Penal statutes are within the operation of the general rule that statutes in pari materia should be construed together.[1] Under this rule, statutes in relation to the same offense must be taken together and construed as if the matters to which they relate were embraced in a single statute.[2] Similarly, where several legislative acts are part of the same system of laws providing for the prosecution of crimes, misdemeanors, and offenses, naming the parties who will prosecute and prescribing the means and methods to be pursued therein, they must be construed in pari materia.[3] However, where two statutes are distinct in purpose, employ different remedies, and provide different penalties for offenses committed, they should not be so construed in pari materia as to employ the remedies of one for the prosecution of the other.[4]

Footnotes

1 State v. Larimore, 34 Del. 153, 144 A. 867 (Gen. Sess. 1929); Winston v. State, 186 Ga. 573, 198 S.E. 667, 118 A.L.R. 719 (1938).
As to provisions in pari materia, generally, see § 95.

2 State v. Flynn, 137 Or. 8, 300 P. 1024 (1931).

3 People v. Gibson, 53 Colo. 231, 125 P. 531 (1912); State ex rel. Strothers v. Turner, 79 Ohio St. 3d 272, 680 N.E.2d 1238 (1997).

4 People v. Osco Drug, Inc., 12 Ill. App. 3d 603, 298 N.E.2d 753 (3d Dist. 1973).

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§ 197. Avoidance of undesirable consequences

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West's Key Number Digest

West's Key Number Digest, Statutes 241(1)

A.L.R. Library

Defense of inconsequential or de minimis violation in criminal prosecution, 68 A.L.R.5th 299.

The rule of strict construction of a penal law does not prevent the application of the rule of a reasonable or sensible, and fair or just, construction[1] of the statute as a whole[2] in order to avoid an injustice[3] or absurdity which the legislature ought not to be presumed to have intended.[4] Under this rule, general terms descriptive of a class of persons made subject to a criminal statute may and should be limited where the literal application of the statute would lead to extreme or absurd results and where the legislative purpose, gathered from the whole act, would be satisfied by a more limited interpretation.[5]

CUMULATIVE SUPPLEMENT

Cases:

To rely upon prosecutorial discretion to narrow the otherwise wide-ranging scope of a criminal statute's highly abstract general statutory language places great power in the hands of the prosecutor, and doing so risks allowing policemen, prosecutors, and

juries to pursue their personal predilections, which could result in the nonuniform execution of that power across time and geographic location, and, insofar as the public fears arbitrary prosecution, it risks undermining necessary confidence in the criminal justice system. Marinello v. U.S., 138 S. Ct. 1101 (2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S. v. Alford, 274 U.S. 264, 47 S. Ct. 597, 71 L. Ed. 1040 (1927); American Amusements Co. v. Nebraska Dept. of Revenue, 282 Neb. 908, 807 N.W.2d 492 (2011); Swift & Co. v. Peterson, 192 Or. 97, 233 P.2d 216 (1951).
As to the avoidance of undesirable consequences in the construction of statutes, generally, see § 162.

2 Swift & Co. v. Peterson, 192 Or. 97, 233 P.2d 216 (1951).

3 Angelini v. Court of Common Pleas In and For New Castle County, 58 Del. 84, 205 A.2d 174 (1964); State v. Brown, 258 Neb. 346, 603 N.W.2d 456 (1999).

4 Lewis v. State, 765 So. 2d 493 (Miss. 2000); State v. Brown, 258 Neb. 346, 603 N.W.2d 456 (1999).

5 United States v. Katz, 271 U.S. 354, 46 S. Ct. 513, 70 L. Ed. 986 (1926); Swift & Co. v. Peterson, 192 Or. 97, 233 P.2d 216 (1951).

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4. Statutory Grants

§ 198. Generally

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West's Key Number Digest

West's Key Number Digest, Statutes 238

It is a general rule of statutory construction that legislative grants containing ambiguous terminology are subject to a strict construction[1] against the grantee[2] and in favor of the public or government.[3] This principle is applicable to grants in derogation of public rights[4] and to grants of powers or privileges to individuals for their own advantage.[5] The rule is sometimes based upon the demands of public policy[6] and upon the protection of the public interest.[7]

Footnotes

1 Caldwell v. U.S., 250 U.S. 14, 39 S. Ct. 397, 63 L. Ed. 816 (1919); MacRae v. Selectmen of Town of Concord, 296 Mass. 394, 6 N.E.2d 366, 108 A.L.R. 1450 (1937).

2 Russell v. Sebastian, 233 U.S. 195, 34 S. Ct. 517, 58 L. Ed. 912 (1914); People ex rel. Sweitzer v. City of Chicago, 363 Ill. 409, 2 N.E.2d 330, 104 A.L.R. 1335 (1936).

3 Great Northern R. Co. v. U.S., 315 U.S. 262, 62 S. Ct. 529, 86 L. Ed. 836 (1942); Bontrager v. La Plata Elec. Ass'n Inc., 68 P.3d 555 (Colo. App. 2003); Pocatello v. State, 145 Idaho 497, 180 P.3d 1048 (2008); Texas General Land Office v. Porretto, 2011 WL 6282354 (Tex. App. Houston 1st Dist. 2011).

4 Pine River Irrigation Dist. v. U.S., 656 F. Supp. 2d 1298 (D. Colo. 2009); East Ohio Gas Co. v. City of Akron, 81 Ohio St. 33, 90 N.E. 40 (1909).

5 Pine River Irrigation Dist. v. U.S., 656 F. Supp. 2d 1298 (D. Colo. 2009); Board of Com'rs of Vigo County v. Davis, 136 Ind. 503, 36 N.E. 141 (1894).

6 Cain v. South Carolina Public Service Authority, 222 S.C. 200, 72 S.E.2d 177 (1952); City of Galveston v. Texas General Land Office, 196 S.W.3d 218 (Tex. App. Houston 1st Dist. 2006).

7 Reichelderfer v. Quinn, 287 U.S. 315, 53 S. Ct. 177, 77 L. Ed. 331, 83 A.L.R. 1429 (1932); Cain v. South Carolina Public Service Authority, 222 S.C. 200, 72 S.E.2d 177 (1952).

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West's Key Number Digest

West's Key Number Digest, Statutes 238

In the application of a strict construction to statutory grants, nothing may be presumed[1] or inferred against the State from vague or doubtful language.[2] Under this rule, only such powers and rights may be exercised under the grant as appear affirmatively,[3] specifically,[4] explicitly,[5] or expressly,[6] or, in general, only such powers and rights as are clearly comprehended within the words of the act.[7] Statutory grants are not to be enlarged by construction.[8] Instead, every reasonable doubt should be so resolved as to limit the powers and rights claimed under the authority of the statute.[9] The law frowns upon any attempt to enlarge the scope of a statute in derogation of the common law or to loosen a strict adherence to the statutory procedure prescribed, and this is particularly true in the case of a statute that grants immunity.[10] Immunity from tort liability is not favored in the law since it bars the injured person from the recovery of compensatory damages against the party who is otherwise responsible for the injury, and for that reason, immunity statutes must be strictly construed and not extended beyond their plain meaning.[11]

Footnotes

1 Pedrick v. Raleigh & P.S.R. Co., 143 N.C. 485, 55 S.E. 877 (1906).

2 Pocatello v. State, 145 Idaho 497, 180 P.3d 1048 (2008); City of Galveston v. Texas General Land Office, 196 S.W.3d 218 (Tex. App. Houston 1st Dist. 2006).

3 Rogers v. Toccoa Power Co., 161 Ga. 524, 131 S.E. 517, 44 A.L.R. 534 (1926).

4 State v. Morehead, 100 Neb. 864, 161 N.W. 569 (1917).

5 Caldwell v. U.S., 250 U.S. 14, 39 S. Ct. 397, 63 L. Ed. 816 (1919); Empire Gas & Fuel Co. v. State, 121 Tex. 138, 47 S.W.2d 265 (1932).

6 Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S. Ct. 587, 75 L. Ed. 1324, 79 A.L.R. 1191 (1931); Burnham v. Mayor and Aldermen of Beverly, 309 Mass. 388, 35 N.E.2d 242, 135 A.L.R. 750 (1941).

7 Caldwell v. U.S., 250 U.S. 14, 39 S. Ct. 397, 63 L. Ed. 816 (1919); People ex rel. Friend v. City of Chicago, 261 Ill. 16, 103 N.E. 609 (1913); Empire Gas & Fuel Co. v. State, 121 Tex. 138, 47 S.W.2d 265 (1932).

8 City of St. Paul v. Chicago, M. & St. P. Ry. Co., 63 Minn. 330, 68 N.W. 458 (1896).

9 Aicardi v. State of Alabama, 86 U.S. 635, 22 L. Ed. 215, 1873 WL 15891 (1873); Majestic Household Utilities Corp. v. Stratton, 353 Ill. 86, 186 N.E. 522, 89 A.L.R. 852 (1933); Hamilton Mfg. Co. v. City of Lowell, 274 Mass. 477, 175 N.E. 73, 74 A.L.R. 1213 (1931).

10 Cohen v. W.B. Associates, Inc., 380 N.J. Super. 436, 882 A.2d 456 (Law Div. 2005).

11 Cohen v. W.B. Associates, Inc., 380 N.J. Super. 436, 882 A.2d 456 (Law Div. 2005).

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V. Interpretation

G. Liberal or Strict Construction

4. Statutory Grants

§ 200. Limitations upon strictness of construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 238

There are definite limitations placed upon the strict construction applied to statutory grants. In the first place, where the language of the grant is plain and unambiguous, it is not subject to interpretation but must be accepted and expounded as written.[1] However, a strict construction of a statutory grant does not preclude a fair[2] and reasonable construction thereof.[3] An interpretation is favored which reflects the legislative policy[4] and intention or purpose;[5] and the possession of the power granted being established, a generous measure of its exercise will be permitted to the end that such purpose may be effectuated.[6] Thus, statutory grants are construed to include powers, rights, and privileges indispensable to the attainment and maintenance of its declared objects.[7]

Footnotes

1 City of Louisville v. Louisville Home Telephone Co., 149 Ky. 234, 148 S.W. 13 (1912).

2 Russell v. Sebastian, 233 U.S. 195, 34 S. Ct. 517, 58 L. Ed. 912 (1914); Van Eaton v. Town of Sidney, 211 Iowa 986, 231 N.W. 475, 71 A.L.R. 820 (1930).

3 Russell v. Sebastian, 233 U.S. 195, 34 S. Ct. 517, 58 L. Ed. 912 (1914); Fisher v. City of Astoria, 126 Or. 268, 269 P. 853, 60 A.L.R. 260 (1928).

4 Johanson v. State of Washington, 190 U.S. 179, 23 S. Ct. 825, 47 L. Ed. 1008 (1903).

5 Winona & St. P.R. Co. v. Barney, 113 U.S. 618, 5 S. Ct. 606, 28 L. Ed. 1109 (1885); Mathews v. St. Louis & S.F. Ry. Co., 121 Mo. 298, 24 S.W. 591 (1893), aff'd, 165 U.S. 1, 17 S. Ct. 243, 41 L. Ed. 611 (1897); Fisher v. City of Astoria, 126 Or. 268, 269 P. 853, 60 A.L.R. 260 (1928).

6 Fisher v. City of Astoria, 126 Or. 268, 269 P. 853, 60 A.L.R. 260 (1928).

7 Bridgeman v. City of Derby, 104 Conn. 1, 132 A. 25, 45 A.L.R. 728 (1926); Van Eaton v. Town of Sidney, 211 Iowa 986, 231 N.W. 475, 71 A.L.R. 820 (1930).

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V. Interpretation

G. Liberal or Strict Construction

4. Statutory Grants

§ 201. Application of general rules of construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 238

The rule of strict construction of statutory grants does not prevent the courts from calling to their aid other rules of construction and giving each its appropriate scope. This is true of the general rules that in the enactment of a statute, established principles of law are presumed to have been considered by the legislature;[1] that resort may be had to the title of an act as an aid in its interpretation;[2] and that the mention of one thing implies the exclusion of another (expressio unius est exclusio alterius).[3] Similarly, in accordance with the rule that it is proper for the courts in determining the meaning of a statute to take into consideration subsequent action of the legislature or the interpretation which the legislature subsequently places upon the statute,[4] the enactment of subsequent legislation containing a specific grant of power kindred to that contained in prior legislation affords persuasive support to the conclusion that it was not included in the former grant.[5] It is also a general rule that when in the early and declaratory sections of a statute the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections, and it is unnecessary in each subsequent section to restate or use words and expressions which will fully disclose the extent of those powers and privileges.[6]

Footnotes

1 Caruthers v. Kansas City, Ft. S. & M.R. Co., 59 Kan. 629, 54 P. 673 (1898).

2 Briggs v. Walker, 171 U.S. 466, 19 S. Ct. 1, 43 L. Ed. 243 (1898).

3 Continental Casualty Co. v. U.S., 314 U.S. 527, 62 S. Ct. 393, 86 L. Ed. 426 (1942); State Bar v. Sexton, 64 Nev. 459, 184 P.2d 356 (1947).
As to the rule of expressio unius est exclusio alterius, generally, see § 120.

4 § 89.

5 State ex rel. Barrett v. First Nat. Bank, 297 Mo. 397, 249 S.W. 619, 30 A.L.R. 918 (1923), aff'd, 263 U.S. 640, 44 S. Ct. 213, 68 L. Ed. 486 (1924).

6 Talbott v. Board of Com'rs of Silver Bow County, 139 U.S. 438, 11 S. Ct. 594, 35 L. Ed. 210 (1891); May v. Board of Com'rs of Town of Nutley, 111 N.J.L. 166, 168 A. 140 (N.J. Sup. Ct. 1933).

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V. Interpretation

G. Liberal or Strict Construction

4. Statutory Grants

§ 202. Implied powers, rights, and privileges

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 238

An express statutory grant of a right, power, or privilege carries with it by implication, in the absence of a limitation, all of the means that are usually employed and that are necessary and proper to the exercise or enjoyment of the right, power, or privilege granted;[1] the power necessarily implied is a part of the legislative act.[2] However, reasonable necessity applies to the extent of and as a limitation upon the authority granted.[3] When a statute imposes a mandatory duty upon a governmental agency to carry out the express and specifically defined purposes and objectives stated in the law, such statute carries with it by necessary implication the authority to do whatever is reasonably necessary to effectuate the legislative mandate and purpose.[4] There is even authority in support of the rule that power in a statutory grant may be implied although it is not indispensable to the exercise of the powers granted.[5] As a general rule, however, in the construction of a statutory grant, a power may not be implied as incidental to powers granted merely because it is useful or convenient.[6]

Footnotes

1 Brock v. Board of County Com'rs of Collier County, 21 So. 3d 844 (Fla. Dist. Ct. App. 2d Dist. 2009), review granted, 26 So. 3d 581 (Fla. 2010) and review dismissed, 48 So. 3d 810 (Fla. 2010); Imperial Irr. Co. v. Jayne, 104 Tex. 395, 138 S.W. 575 (1911); Nowers v. Oakden, 110 Utah 25, 169 P.2d 108 (1946).

2 Meeske v. Baumann, 122 Neb. 786, 241 N.W. 550, 83 A.L.R. 131 (1932).

3 State v. Melton, 41 Wash. 2d 298, 248 P.2d 892 (1952).

4 Corzelius v. Railroad Commission, 182 S.W.2d 412 (Tex. Civ. App. Austin 1944).

5 People ex rel. Sweitzer v. City of Chicago, 363 Ill. 409, 2 N.E.2d 330, 104 A.L.R. 1335 (1936).

6 Van Eaton v. Town of Sidney, 211 Iowa 986, 231 N.W. 475, 71 A.L.R. 820 (1930).

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V. Interpretation

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V. Interpretation

H. Exceptions

§ 203. Generally

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West's Key Number Digest

West's Key Number Digest, Statutes 228

An exception exempts something absolutely from the operation of a statute by express words in the enacting clause; an exception takes out of the statute something that otherwise would be part of the subject matter.[1]

While there are some cases in which exceptions are liberally construed,[2] particularly with respect to statutes subject to a strict construction,[3] ordinarily, a strict[4] or narrow[5] construction is applied to statutory exceptions to the operation of laws. Thus, in the resolution of ambiguities, courts favor a general provision over an exception,[6] and one seeking to be excluded from the operation of the statute must establish that the exception embraces him or her.[7] These rules are particularly applicable where, in general, the law itself is entitled to a liberal construction.[8] In addition, a grandfather clause exception must be construed strictly against the party who invokes it.[9] However, a congressional decision to enact both a general policy that furthers a particular goal and a specific exception that might tend against that goal does not invariably call for the narrowest possible construction of the exception.[10] In any event, the relative position of an exception is unimportant since the act must be construed as a whole; it may appear in a section by itself, and when that is done, it has precisely the same meaning that it would have if the exception were appropriately incorporated in the other sections.[11]

Statutory exceptions are entitled to a reasonable construction.[12]

Under the maxim of statutory construction, "expressio unius est exclusio alterius," (the mention of one thing implies the exclusion of another) if exceptions are specified in a statute, the court may not imply additional exceptions unless there is a clear legislative intent to the contrary.[13]

CUMULATIVE SUPPLEMENT

Cases:

An exception in a statute to a general statement of policy is usually read narrowly in order to preserve the primary operation of the provision. Maracich v. Spears, 133 S. Ct. 2191 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Garcia v. Chicago & N.W. Ry. Co., 256 Wis. 633, 42 N.W.2d 288 (1950).

2 Choate v. Trapp, 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941 (1912).
As to the construction of exemption statutes in relation to the law of creditor and debtor, see Am. Jur. 2d, Exemptions § 16.

3 State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962); In re Taft's Estate, 110 Vt. 266, 4 A.2d 634, 120 A.L.R. 1382 (1939).

4 U.S. v. Public Utilities Commission of Cal., 345 U.S. 295, 73 S. Ct. 706, 97 L. Ed. 1020 (1953); U.S. v. Endotec, Inc., 563 F.3d 1187 (11th Cir. 2009); Carter v. Cohen, 188 Cal. App. 4th 1038, 116 Cal. Rptr. 3d 303 (2d Dist. 2010); Taylor v. Conservation Com'n of Town of Fairfield, 302 Conn. 60, 24 A.3d 1199 (2011); Hubner v. Spring Valley Equestrian Center, 203 N.J. 184, 1 A.3d 618 (2010).

5 Piedmont & N. Ry. Co. v. Interstate Commerce Commission, 286 U.S. 299, 52 S. Ct. 541, 76 L. Ed. 1115 (1932); Boyle v. Quest Diagnostics, Inc., 441 F. Supp. 2d 665 (D.N.J. 2006); Sacramento County Employees' Retirement System v. Superior Court, 195 Cal. App. 4th 440, 125 Cal. Rptr. 3d 655 (3d Dist. 2011); McNeil v. Hansen, 2007 WI 56, 300 Wis. 2d 358, 731 N.W.2d 273 (2007).

6 Quynh Truong v. Allstate Ins. Co., 2010-NMSC-009, 147 N.M. 583, 227 P.3d 73 (2010).

7 N.L.R.B. v. Kentucky River Community Care, Inc., 532 U.S. 706, 121 S. Ct. 1861, 149 L. Ed. 2d 939 (2001); Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir. 2009); Gentry v. Harborage Cottages-Stuart, LLLP, 654 F.3d 1247 (11th Cir. 2011); Taylor v. Conservation Com'n of Town of Fairfield, 302 Conn. 60, 24 A.3d 1199 (2011).

8 Piedmont & N. Ry. Co. v. Interstate Commerce Commission, 286 U.S. 299, 52 S. Ct. 541, 76 L. Ed. 1115 (1932); Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576, 28 A.L.R.2d 272 (1950); Dean v. McMullen, 109 Ohio St. 309, 2 Ohio L. Abs. 149, 2 Ohio L. Abs. 165, 142 N.E. 683 (1924).

9 U.S. v. Allan Drug Corp., 357 F.2d 713 (10th Cir. 1966); Lamar Tennessee, LLC v. City of Hendersonville, 171 S.W.3d 831 (Tenn. Ct. App. 2005).

10 City of Columbus v. Ours Garage and Wrecker Service, Inc., 536 U.S. 424, 122 S. Ct. 2226, 153 L. Ed. 2d 430 (2002).

11 State v. Hill, 189 Kan. 403, 369 P.2d 365, 91 A.L.R.2d 750 (1962); State ex rel. Astor v. Schlitz Brewing Co., 104 Tenn. 715, 59 S.W. 1033 (1900).

12 E. I. Du Pont De Nemours & Co. v. Clark, 32 Del. Ch. 527, 88 A.2d 436 (1952); Hubner v. Spring Valley Equestrian Center, 203 N.J. 184, 1 A.3d 618 (2010).

13 TRW Inc. v. Andrews, 534 U.S. 19, 122 S. Ct. 441, 151 L. Ed. 2d 339 (2001); Rojas v. Superior Court, 33 Cal. 4th 407, 15 Cal. Rptr. 3d 643, 93 P.3d 260 (2004); Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 35 A.3d 562 (2011).

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V. Interpretation

H. Exceptions

§ 204. Implied exceptions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 228

It is a general rule of construction that the courts have no authority to create,[1] and will not create,[2] exceptions to the provisions of a statute not made by the act itself. Where the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none.[3] No rule of public policy is available to create exceptions to a statutory rule.[4] It is especially true that the power to create exceptions may not be exercised where the words of the statute are free from ambiguity.[5] An exemption will not be inferred from language of a statute if the words admit of any other reasonable construction.[6] Courts cannot depart from the plain language of a statute by reading into it exceptions not expressed by the legislature[7] or by reading into a statute exceptions which conflict with the clearly expressed legislative intent.[8]

On the other hand, there are some cases in which exceptions to the general provisions of a statute may be implied by the courts,[9] such as where the exceptions are necessary to give effect to the legislative intent[10] or where the exceptions are essential to prevent absurd results or consequences obviously at variance with the policy of the enactment as a whole.[11] Of course, exceptions must appear plainly from the express words or necessary intendment of the statute.[12]

CUMULATIVE SUPPLEMENT

Cases:

Courts may not depart from the plain language of a statute by reading into it exceptions, conditions, or limitations that the legislature did not express. Skaperdas v. Country Cas. Ins. Co., 2015 IL 117021, 390 Ill. Dec. 94, 28 N.E.3d 747 (Ill. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Been v. New Mexico Dept. of Information Technology, 815 F. Supp. 2d 1222 (D.N.M. 2011); Weize Co., LLC v. Colorado Regional Const., Inc., 251 P.3d 489 (Colo. App. 2010); Treadway v. Holder, 309 S.W.3d 780 (Tex. App. Austin 2010), review denied, (Mar. 11, 2011).

2 Bull v. U.S., 295 U.S. 247, 55 S. Ct. 695, 79 L. Ed. 1421 (1935); Strope v. Cummings, 653 F.3d 1271 (10th Cir. 2011); A.C., IV v. People, 16 P.3d 240 (Colo. 2001); In re C.C., 2011 IL 111795, 355 Ill. Dec. 25, 959 N.E.2d 53 (Ill. 2011).

3 An Independent Home Support Service, Inc. v. Superior Court, 145 Cal. App. 4th 1418, 52 Cal. Rptr. 3d 562 (4th Dist. 2006); State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

4 Brahmey v. Rollins, 87 N.H. 290, 179 A. 186, 119 A.L.R. 8 (1935).

5 Metzinger v. Kentucky Retirement Systems, 299 S.W.3d 541 (Ky. 2009); State v. Paulson, 2001 ND 82, 625 N.W.2d 528 (N.D. 2001).

6 GMAC LLC v. Treasury Dept., 286 Mich. App. 365, 781 N.W.2d 310 (2009), appeal denied, 486 Mich. 961, 782 N.W.2d 770 (2010).

7 In re Haley D., 2011 IL 110886, 355 Ill. Dec. 375, 959 N.E.2d 1108 (Ill. 2011).

8 People v. Hammond, 2011 IL 110044, 355 Ill. Dec. 1, 959 N.E.2d 29 (Ill. 2011).

9 U. S. v. Rutherford, 442 U.S. 544, 99 S. Ct. 2470, 61 L. Ed. 2d 68 (1979); U.S. ex rel. Lujan v. Hughes Aircraft Co., 243 F.3d 1181 (9th Cir. 2001); Johnson v. Johnson, 1938 OK 194, 182 Okla. 293, 77 P.2d 745 (1938).

10 Preston v. Browder, 14 U.S. 115, 4 L. Ed. 50, 1816 WL 1766 (1816); U.S. v. Supreme Merchandise Co., 48 Cust. Ct. 714, 1962 WL 10577 (Cust. Ct. 2 Div. 1962); Foster v. Curtis, 213 Mass. 79, 99 N.E. 961 (1912).

11 U.S. v. Broncheau, 645 F.3d 676 (4th Cir. 2011).

12 Retailers Credit Ass'n of Alameda County v. Commissioner of Internal Revenue, 90 F.2d 47, 111 A.L.R. 152 (C.C.A. 9th Cir. 1937); State v. Heard, 246 Miss. 774, 151 So. 2d 417 (1963).

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V. Interpretation

H. Exceptions

§ 205. Effect or consequences of absence of exceptions

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West's Key Number Digest

West's Key Number Digest, Statutes 228

The view has been followed that where the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none and that it is a general rule of construction that the courts have no authority to create, and will not create, exceptions to the provisions of a statute not made by the act itself.[1] However, some cases have regarded it as proper to imply exceptions in a statute in order to obviate a construction that would be unjust, oppressive, unreasonable, or absurd.[2] Under this view, it is only where the necessity is imperious and where absurd or manifestly unjust consequences would otherwise certainly result that the courts may recognize exceptions.[3] Indeed, an exception to the provisions thereof which is not suggested by any of its terms should not be introduced by construction from considerations of mere convenience,[4] equity,[5] public welfare,[6] or hardship.[7] In support of the rule, it is declared that if statutes are too rigid in their provisions, the remedy is with the legislature.[8]

CUMULATIVE SUPPLEMENT

Cases:

There is no such thing as a canon of donut holes, in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception; instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule. Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020).

[END OF SUPPLEMENT]

Footnotes

1 Strope v. Cummings, 653 F.3d 1271 (10th Cir. 2011); Been v. New Mexico Dept. of Information Technology, 815 F. Supp. 2d 1222 (D.N.M. 2011) (applying New Mexico law); Weize Co., LLC v. Colorado Regional Const., Inc., 251 P.3d 489 (Colo. App. 2010); Metzinger v. Kentucky Retirement Systems, 299 S.W.3d 541 (Ky. 2009); Treadway v. Holder, 309 S.W.3d 780 (Tex. App. Austin 2010), review denied, (Mar. 11, 2011).

2 U. S. v. Rutherford, 442 U.S. 544, 99 S. Ct. 2470, 61 L. Ed. 2d 68 (1979); U.S. ex rel. Lujan v. Hughes Aircraft Co., 243 F.3d 1181 (9th Cir. 2001); State v. Goff, 79 S.D. 138, 109 N.W.2d 256 (1961).

3 U. S. v. Rutherford, 442 U.S. 544, 99 S. Ct. 2470, 61 L. Ed. 2d 68 (1979); U.S. ex rel. Lujan v. Hughes Aircraft Co., 243 F.3d 1181 (9th Cir. 2001).

4 Allen v. Tressenrider, 72 Ohio St. 77, 73 N.E. 1015 (1905).

5 Louisville & N.R. Co. v. Mottley, 219 U.S. 467, 31 S. Ct. 265, 55 L. Ed. 297 (1911); Powell v. Koehler, 52 Ohio St. 103, 39 N.E. 195 (1894); Pillow v. McLean, 91 S.W.2d 898 (Tex. Civ. App. Amarillo 1936), judgment aff'd, 131 Tex. 539, 117 S.W.2d 57 (Comm'n App. 1938).

6 State v. Tennyson, 212 Minn. 158, 2 N.W.2d 833, 139 A.L.R. 987 (1942).

7 Amy v. City of Watertown, 130 U.S. 320, 9 S. Ct. 537, 32 L. Ed. 953 (1889); Lewis v. Pawnee Bill's Wild West Co., 22 Del. 316, 6 Penne. 316, 66 A. 471 (1907).

8 Joslyn v. Chang, 445 Mass. 344, 837 N.E.2d 1107 (2005); Mellen Lumber Co. v. Industrial Commission of Wisconsin, 154 Wis. 114, 142 N.W. 187 (1913).

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V. Interpretation

H. Exceptions

§ 206. Effect of express exceptions

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West's Key Number Digest

West's Key Number Digest, Statutes 228

When a legislature specifically enumerates certain exceptions to a statute, a court will presume that the legislature intended to exclude any other exceptions.[1] In this regard, where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent.[2] Where express exceptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute. Thus, the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted and excludes all other exceptions[3] or the enlargement of exceptions made.[4] Under this principle, where a general rule has been established by a statute with exceptions, the courts will neither curtail the former nor add to the latter by implication.[5]

Footnotes

1 Seitzinger v. Community Health Network, 2004 WI 28, 270 Wis. 2d 1, 676 N.W.2d 426 (2004).

2 Andrus v. Glover Const. Co., 446 U.S. 608, 100 S. Ct. 1905, 64 L. Ed. 2d 548 (1980); U.S. v. AEY, Inc., 603 F. Supp. 2d 1363 (S.D. Fla. 2009); Simmons v. Ghaderi, 44 Cal. 4th 570, 80 Cal. Rptr. 3d 83, 187 P.3d 934 (2008); Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 35 A.3d 562 (2011).

3 Andrus v. Glover Const. Co., 446 U.S. 608, 100 S. Ct. 1905, 64 L. Ed. 2d 548 (1980); Cyktor v. Aspen Manor Condominium Ass'n, 359 N.J. Super. 459, 820 A.2d 129 (App. Div. 2003); Thomas v. Freeman, 79 Ohio St. 3d 221, 1997-Ohio-395, 680 N.E.2d 997 (1997).
As to the general application of the rule "expressio unius est exclusio alterius," see §§ 120, 121.

4 Addison v. Holly Hill Fruit Products, 322 U.S. 607, 64 S. Ct. 1215, 88 L. Ed. 1488, 153 A.L.R. 1007 (1944); Wray v. Superior Court, Greenlee County, 82 Ariz. 79, 308 P.2d 701 (1957).

5 Andrus v. Glover Const. Co., 446 U.S. 608, 100 S. Ct. 1905, 64 L. Ed. 2d 548 (1980); People v. Lai, 138 Cal. App. 4th 1227, 42 Cal. Rptr. 3d 444 (2d Dist. 2006); Tuxis Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act, 127 Conn. App. 739, 16 A.3d 777 (2011), certification granted, 301 Conn. 911, 19 A.3d 180 (2011); Ex parte Campbell, 267 S.W.3d 916 (Tex. Crim. App. 2008).

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V. Interpretation

I. Provisos

§ 207. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 228

A proviso defeats the operation of a statute conditionally.[1] A savings clause or proviso in a statute is usually strictly construed.[2] A statutory proviso is traditionally not to be extended by construction but is to be strictly limited to the objects fairly within its terms.[3] Statutory provisos are strictly construed because the legislative purpose set forth in the purview of an enactment is assumed to express the legislative policy, and only those subjects expressly exempted by the proviso should be freed from the operation of the statute.[4]

The cardinal rule of construction of statutes that the intention of the legislature must be ascertained and given effect applies to provisos, as well as to any other statutory provision.[5] The construction of a statute containing provisos must depend upon its terms,[6] but where a proviso is intended to restrain previous provisions and not merely to prevent a possible misinterpretation thereof, it is generally regarded that the matter contained in the proviso would have been within the language of the main provisions had the proviso not been included.[7] It is a legal principle that when a proviso carves an exception out of the body of a statute or contract, those who set up such exception must prove it.[8]

Footnotes

1 Garcia v. Chicago & N.W. Ry. Co., 256 Wis. 633, 42 N.W.2d 288 (1950).

2 Price v. Upper Chesapeake Health Ventures, 192 Md. App. 695, 995 A.2d 1054 (2010), cert. denied, 415 Md. 609, 4 A.3d 514 (2010); Mountain Hill, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Middletown, 403 N.J. Super. 210, 958 A.2d 42 (App. Div. 2008).

3 In re Paternity of Duran, 900 N.E.2d 454 (Ind. Ct. App. 2009).

4 Chism v. Jefferson County, 954 So. 2d 1058, 219 Ed. Law Rep. 828 (Ala. 2006), as modified on reh'g, (Oct. 5, 2006).

5 Therrell v. Smith, 124 Fla. 197, 168 So. 389 (1936); State ex rel. Jones v. Second Judicial Dist. Court in and for Washoe County, Dept., 1, 59 Nev. 460, 98 P.2d 342 (1940); Little v. Stevens, 267 N.C. 328, 148 S.E.2d 201 (1966).

6 American Express Co. v. U.S., 212 U.S. 522, 29 S. Ct. 315, 53 L. Ed. 635 (1909); State v. Shaw, 38 Del. 352, 192 A. 610 (Gen. Sess. 1937).

7 Thaw v. Falls, 136 U.S. 519, 10 S. Ct. 1037, 34 L. Ed. 531 (1890); People v. Sischo, 23 Cal. 2d 478, 144 P.2d 785, 150 A.L.R. 1431 (1943).

8 Simpson Strong-Tie Company, Inc. v. Gore, 49 Cal. 4th 12, 109 Cal. Rptr. 3d 329, 230 P.3d 1117 (2010).

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V. Interpretation

I. Provisos

§ 208. Function

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 228

The natural and appropriate office of a proviso is to create a condition precedent;[1] to except something from the enacting clause; to limit, restrict, or qualify the statute in whole or in part;[2] or to exclude from the scope of the statute that which otherwise would be within its terms.[3] A proviso is not, however, always so used. At times, it is employed out of abundant caution merely to explain the general words of the enactment and to guard against a possible construction that is not intended.[4]

It is a common practice in legislative proceedings, during the consideration of bills, for parties desirous of securing amendments to them to precede their proposed amendments with the term "provided" so as to declare that notwithstanding existing provisions, the one thus expressed is to prevail thus having no greater signification than would be attached to the conjunction "but" or "and" in the same place and simply serving to separate or distinguish the different paragraphs or sentences.[5] Under this practice, the term "provided" is frequently regarded as used, not as qualifying the operation of the statute but as conjunctive to an independent paragraph.[6] So provisos have therefore frequently been found to bring in new matter rather than to limit or explain that which has gone before.[7] Thus, while, in general, a proviso serves to except something from an enacting clause, or to qualify and restrain its generality, a proviso may introduce independent legislation.[8] When a statute contains provisos and exceptions, the court may infer the intended scope of an enacting clause from the character of the provisos or exceptions pertaining to it.[9]

Footnotes

1 In re Harper's Estate, 272 Mich. 476, 262 N.W. 289 (1935); Matteson v. Wm. S. Sweet & Son, 58 R.I. 411, 193 A. 171, 114 A.L.R. 293 (1937).

2 Minis v. U.S., 40 U.S. 423, 10 L. Ed. 791, 1841 WL 5014 (1841); In re Paternity of Duran, 900 N.E.2d 454 (Ind. Ct. App. 2009); Great Western Sugar Co. v. Mitchell, 119 Mont. 328, 174 P.2d 817 (1946).

3 McDonald v. U.S., 279 U.S. 12, 49 S. Ct. 218, 73 L. Ed. 582 (1929); Great Western Sugar Co. v. Mitchell, 119 Mont. 328, 174 P.2d 817 (1946); AP Orthopedics & Rehabilitation, P.C. v. Allstate Ins. Co., 27 Misc. 3d 698, 896 N.Y.S.2d 612 (N.Y. City Civ. Ct. 2010).

4 U.S. v. Morrow, 266 U.S. 531, 45 S. Ct. 173, 69 L. Ed. 425 (1925); Liberty Consol. School Dist. v. Schindler, 246 Iowa 1060, 70 N.W.2d 544 (1955); State v. Standard Oil Co. of N. J., 195 S.C. 267, 10 S.E.2d 778 (1940).

5 American Express Co. v. U.S., 212 U.S. 522, 29 S. Ct. 315, 53 L. Ed. 635 (1909); State v. Craft, 334 Mo. 311, 66 S.W.2d 521 (1933); Union Pac. R. Co. v. Anderson, 167 Or. 687, 120 P.2d 578 (1941).

6 Little v. Stevens, 267 N.C. 328, 148 S.E.2d 201 (1966); Com. v. Central Nat. Bank, 293 Pa. 404, 143 A. 105 (1928).

7 Burlingham v. Crouse, 228 U.S. 459, 33 S. Ct. 564, 57 L. Ed. 920 (1913); State v. Shaw, 38 Del. 352, 192 A. 610 (Gen. Sess. 1937).

8 Republic of Iraq v. Beaty, 556 U.S. 848, 129 S. Ct. 2183, 173 L. Ed. 2d 1193 (2009).

9 Burns v. City of Seattle, 161 Wash. 2d 129, 164 P.3d 475 (2007).

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V. Interpretation

I. Provisos

§ 209. Restriction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 228

Generally, a proviso which operates to limit the application of the provisions of a statute general in terms should be strictly construed[1] and include no case not clearly within the purpose,[2] letter,[3] or express terms of the proviso.[4] This rule is particularly applicable in the case of a remedial statute.[5]

Footnotes

1 Hunsinger v. Boyd, 119 Tex. 182, 26 S.W.2d 905 (1930).

2 U.S. v. McElvain, 272 U.S. 633, 47 S. Ct. 219, 71 L. Ed. 451 (1926).

3 Bird & Jex Co. v. Funk, 96 Utah 450, 85 P.2d 831 (1939); Jordan v. Town of South Boston, 138 Va. 838, 122 S.E. 265 (1924).

4 Bone v. Dwyer, 89 Cal. App. 535, 265 P. 292 (3d Dist. 1928).

5 Gregg Cartage & Storage Co. v. U.S., 316 U.S. 74, 62 S. Ct. 932, 86 L. Ed. 1283 (1942).
As to the liberal construction of remedial statutes, generally, see §§ 175 to 184.

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V. Interpretation

I. Provisos

§ 210. Provisions affected

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 228

The object of a proviso in a statute is to limit and qualify that which immediately precedes it[1] or to restrain or qualify the generality of the language that it follows.[2] Indeed, the presumption is that a proviso in a statute refers only to the provision to which it is attached,[3] and, as a general rule, a proviso is deemed to apply only to the immediately preceding clause or provision[4] unless it is clear that it applies to subsequent matter[5] according to the legislative intent.[6] However, a proviso following a clause in a statute is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used.[7] A proviso may even relate to an act as a whole when it is clear from the terms of the act that such was the legislative intent.[8] Usually, a proviso in a statute containing the words "provided that" before a sentence or clause states an exception to the preceding sentence or clause.[9]

Footnotes

1 Hackney v. Southwest Hotels, 210 Ark. 234, 195 S.W.2d 55 (1946); People v. Sischo, 23 Cal. 2d 478, 144 P.2d 785, 150 A.L.R. 1431 (1943).

2 U.S. v. Morrow, 266 U.S. 531, 45 S. Ct. 173, 69 L. Ed. 425 (1925); Hackney v. Southwest Hotels, 210 Ark. 234, 195 S.W.2d 55 (1946); In re Johnson, 208 Cal. 282, 281 P. 57 (1929).

3 U.S. v. McClure, 305 U.S. 472, 59 S. Ct. 335, 83 L. Ed. 296 (1939); In re Paternity of Duran, 900 N.E.2d 454 (Ind. Ct. App. 2009); Funderburk v. Oklahoma State and Educ. Employees Group Ins. Bd., 2011 OK CIV APP 123, 268 P.3d 556, 276 Ed. Law Rep. 458 (Div. 1 2011).

4 Dollar Sav. Bank v. United States, 86 U.S. 227, 22 L. Ed. 80, 1873 WL 15994 (1873); Herrick v. Essex Regional Retirement Bd., 77 Mass. App. Ct. 645, 933 N.E.2d 666 (2010); Funderburk v. Oklahoma State

and Educ. Employees Group Ins. Bd., 2011 OK CIV APP 123, 268 P.3d 556, 276 Ed. Law Rep. 458 (Div. 1 2011); Donnelly v. York County Bd. of Assessment Appeals, 976 A.2d 1226 (Pa. Commw. Ct. 2009).

5 McDonald v. U.S., 279 U.S. 12, 49 S. Ct. 218, 73 L. Ed. 582 (1929); Orlosky v. Haskell, 304 Pa. 57, 155 A. 112 (1931); Jordan v. Town of South Boston, 138 Va. 838, 122 S.E. 265 (1924).

6 U.S. v. G. Falk & Bro., 204 U.S. 143, 27 S. Ct. 191, 51 L. Ed. 411 (1907); Texas & P. Ry. Co. v. State, 52 S.W.2d 957 (Tex. Civ. App. Austin 1932), writ granted, (July 19, 1932) and aff'd, 124 Tex. 482, 78 S.W.2d 580 (Comm'n App. 1935).

7 Alaska v. U.S., 545 U.S. 75, 125 S. Ct. 2137, 162 L. Ed. 2d 57 (2005), judgment entered, 546 U.S. 413, 126 S. Ct. 1014, 163 L. Ed. 2d 995 (2006).

8 Texas & P. Ry. Co. v. State, 52 S.W.2d 957 (Tex. Civ. App. Austin 1932), writ granted, (July 19, 1932) and aff'd, 124 Tex. 482, 78 S.W.2d 580 (Comm'n App. 1935).

9 Woods v. VanDevender, 296 S.W.3d 275 (Tex. App. Beaumont 2009), review denied, (July 2, 2010).

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V. Interpretation

I. Provisos

§ 211. Provisions considered for purposes of interpretation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 228

All parts of a statute including provisos are to be construed together.[1] The fundamental principle of interpretation that effect should be given to all parts of a statute requires that some effect should be given to a proviso when that can be done in accordance with the recognized rules of construction.[2] Similarly, since the office of a proviso is not to repeal the main provisions of the act but to limit their application, no proviso should be so construed as to destroy those provisions.[3] While there is contrary authority,[4] the general rule is that a proviso which is directly repugnant to the purview or body of the act is inoperative and void for repugnancy.[5]

Footnotes

1 Cherokee Brick & Tile Co. v. Redwine, 209 Ga. 691, 75 S.E.2d 550 (1953).

2 State of California v. Deseret Water, Oil & Irrigation Co., 243 U.S. 415, 37 S. Ct. 394, 61 L. Ed. 821 (1917); In re Wiley's Guardianship, 239 Iowa 1225, 34 N.W.2d 593 (1948); Western Machinery Exchange v. Grays Harbor County, 190 Wash. 447, 68 P.2d 613 (1937).

3 Kane v. City of Marion, 251 Iowa 1157, 104 N.W.2d 626 (1960); Bird & Jex Co. v. Funk, 96 Utah 450, 85 P.2d 831 (1939).

4 Arnett v. State, 168 Ind. 180, 80 N.E. 153 (1907).

5 American Can Co. v. McCanless, 183 Tenn. 491, 193 S.W.2d 86 (1946); State ex rel. Wilson v. King County, 7 Wash. 2d 104, 109 P.2d 291 (1941); Charter Communications VI, PLLC v. Community Antenna Service, Inc., 211 W. Va. 71, 561 S.E.2d 793 (2002).

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J. Reenacted, Revised, Adopted, and Uniform Provisions

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Research References

West's Key Number Digest

West's Key Number Digest, Statutes 230, 231

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V. Interpretation

J. Reenacted, Revised, Adopted, and Uniform Provisions

1. Reenacted Provisions

§ 212. Generally; legislative adoption of judicial interpretation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 230, 231

A.L.R. Library

Effect of simultaneous repeal and re-enactment of all, or part, of legislative act, 77 A.L.R.2d 336.

The readopted sections of an amended law are to be construed with reference to the amended sections thereof.[1] In this regard, the legislature, in reenacting the statute, may be presumed to have used a word therein in the same sense in which it was used in the former statute.[2] The reenactment of a statute in substantially the same words effects no change in the law[3] but merely continues the original law in force.[4] Furthermore, no change in the meaning of a statute is effected by its subsequent repeal and reenactment even though the circumstances have changed.[5]

Since it is presumed that the legislature knew a construction, long acquiesced in, given by the courts to a statute reenacted by the legislature,[6] there is a presumption of an intention to adopt the construction, as well as the language of the prior enactment.[7] It is accordingly a settled rule of statutory construction that when a statute or a clause or provision thereof has been construed by a court of last resort and the same is substantially reenacted, the legislature may be regarded as adopting such construction.[8]

Observation:

The Uniform Statute and Rule Construction Act provides that a statute that is revised, whether by amendment or by repeal and reenactment, is a continuation of the previous statute or rule and not a new enactment to the extent that it contains substantially the same language as the previous statute or rule.[9]

CUMULATIVE SUPPLEMENT

Cases:

When Congress adopts the language used in an earlier act, the Supreme Court presumes that Congress adopted also the construction given by the Supreme Court to such language, and made it a part of the enactment. Georgia v. Public.Resource.Org, Inc., 140 S. Ct. 1498 (2020).

Reformation or reenactment of a statute does not alter the purpose or intent of a law unless that is the express intent of the legislature. Adams v. CDM Media USA, Inc., 346 P.3d 70 (Haw. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Pershing Quicksilver Co. v. Thiers, 62 Nev. 382, 152 P.2d 432 (1944).

2 State ex rel. Buerk v. Calhoun, 330 Mo. 1172, 52 S.W.2d 742, 83 A.L.R. 1393 (1932).

3 Appeal of Van Dyke, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 (1935).

4 Graver v. Pennsylvania Public Utility Com'n, 79 Pa. Commw. 528, 469 A.2d 1154 (1984); Independence Ins. Co. v. Independent Life & Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399 (1950).

5 People ex rel. Donegan v. Dooling, 141 A.D. 31, 125 N.Y.S. 783 (2d Dep't 1910); Appeal of Van Dyke, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 (1935).

6 California v. U.S., 47 Fed. Cl. 688 (2000), rev'd on other grounds and remanded, 271 F.3d 1377 (Fed. Cir. 2001); Gaither v. Lager, 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 (1954); Roy F. Stamm Elec. Co. v. Hamilton-Brown Shoe Co., 350 Mo. 1178, 171 S.W.2d 580, 146 A.L.R. 917 (1943).

7 Lorillard v. Pons, 434 U.S. 575, 98 S. Ct. 866, 55 L. Ed. 2d 40, 24 Fed. R. Serv. 2d 1005 (1978); Hall v. Chi, 782 So. 2d 218 (Ala. 2000); Robinson v. Fair Employment & Housing Com., 2 Cal. 4th 226, 5 Cal. Rptr. 2d 782, 825 P.2d 767 (1992).

8 Pierce v. Underwood, 487 U.S. 552, 108 S. Ct. 2541, 101 L. Ed. 2d 490 (1988); Com. v. Colturi, 448 Mass. 809, 864 N.E.2d 498 (2007); GMAC LLC v. Treasury Dept., 286 Mich. App. 365, 781 N.W.2d 310 (2009), appeal denied, 486 Mich. 961, 782 N.W.2d 770 (2010); State v. Ferguson, 120 Ohio St. 3d 7, 2008-Ohio-4824, 896 N.E.2d 110 (2008); Texas Dept. of Protective and Regulatory Services v. Mega Child Care, Inc., 145 S.W.3d 170 (Tex. 2004).

9 Unif. Statute and Rule Construction Act § 14.

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V. Interpretation

J. Reenacted, Revised, Adopted, and Uniform Provisions

1. Reenacted Provisions

§ 213. Conclusiveness of prior interpretation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 230, 231

While the general rule of statutory construction, that when a statute or a clause or provision thereof has received a judicial construction and the same is substantially reenacted the legislature may be regarded as adopting such construction, is persuasive,[1] and in some cases is even regarded as binding upon the courts,[2] it is not conclusive under all circumstances.[3] The doctrine is only regarded as applicable where the contrary is not clearly shown by the language of the act;[4] or where applicable rules of statutory construction have not been changed;[5] or where there is no cue or clue from the legislature that the words or phrases in the new statute are to be viewed differently than in their earlier applications;[6] or where, in general, there are no cogent reasons for coming to a different conclusion.[7] Some courts find that the doctrine is no more than an aid in statutory construction.[8]

Footnotes

1 Kales v. Commissioner of Internal Revenue, 101 F.2d 35, 122 A.L.R. 211 (C.C.A. 6th Cir. 1939); Howard Pore, Inc. v. Nims, 322 Mich. 49, 33 N.W.2d 657, 4 A.L.R.2d 1041 (1948).

2 Merchants' Nat. Bank of Mobile v. Hubbard, 222 Ala. 518, 133 So. 723, 74 A.L.R. 646 (1931).

3 Metropolitan Stevedore Co. v. Rambo, 515 U.S. 291, 115 S. Ct. 2144, 132 L. Ed. 2d 226 (1995); Welch v. Fiber Glass Engineering, Inc., 31 Wis. 2d 143, 142 N.W.2d 203 (1966).

4 Heald v. District of Columbia, 254 U.S. 20, 41 S. Ct. 42, 65 L. Ed. 106 (1920); Blodgett v. Superior Court of Santa Barbara County, 210 Cal. 1, 290 P. 293, 72 A.L.R. 482 (1930); Coleman v. Inland Gas Corporation, 231 Ky. 637, 21 S.W.2d 1030 (1929).

5 Shelton v. Hickman, 26 Tenn. App. 344, 172 S.W.2d 9 (1943).

6 U.S. v. Plesha, 352 U.S. 202, 77 S. Ct. 275, 1 L. Ed. 2d 254 (1957); Petition of County Bd. of Sup'rs for Mecosta County, 381 Mich. 180, 160 N.W.2d 909 (1968); Curtin v. City of New York, 287 N.Y. 338, 39 N.E.2d 903, 142 A.L.R. 166 (1942).

7 Smiley v. Armstrong, 66 S.D. 31, 278 N.W. 21 (1938).

8 Helvering v. Reynolds, 313 U.S. 428, 61 S. Ct. 971, 85 L. Ed. 1438, 134 A.L.R. 1155 (1941); American Ins. Co. v. Iaconi, 47 Del. 167, 89 A.2d 141, 36 A.L.R.2d 604 (1952); Stormo v. City of Dell Rapids, 75 S.D. 582, 70 N.W.2d 831, 51 A.L.R.2d 1123 (1955).

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V. Interpretation

J. Reenacted, Revised, Adopted, and Uniform Provisions

1. Reenacted Provisions

§ 214. Effect of change of terminology or arrangement

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 230, 231

A mere change of phraseology in a reenacted statute does not necessarily require a change of law,[1] and it is not necessary that a statute should have been literally reenacted to authorize the presumption that it was reenacted in the light of the settled judicial construction that the prior enactment had received.[2] However, the presumption of an intention to adopt the construction of the reenacted statute does not exist where there are material changes or additions in the later act which disclose a different intention.[3]

A definite and limited meaning of a statute is not changed by a reenactment without any substantial change in language and title even though the provisions of the former statute are distributed.[4] However, the deliberate separation of a single section of a statute into two sections, and the application of a restriction to the first section but not to the second section, indicates that a similar restriction contained in another section of the statute was intended to apply only to the first section and not to the second section.[5]

Footnotes

1 Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 105 S. Ct. 3180, 87 L. Ed. 2d 220 (1985); Pye v. State, 397 Md. 626, 919 A.2d 632 (2007); State v. Mason, 141 W. Va. 217, 89 S.E.2d 425 (1955).

2 Jay v. O'Donnell, 178 Ind. 282, 98 N.E. 349 (1912); Coleman v. Inland Gas Corporation, 231 Ky. 637, 21 S.W.2d 1030 (1929).

3 White v. Winchester Country Club, 315 U.S. 32, 62 S. Ct. 425, 86 L. Ed. 619 (1942); Pajic v. Old Republic Ins. Co., 394 Ill. App. 3d 1040, 334 Ill. Dec. 738, 917 N.E.2d 564 (1st Dist. 2009); State v. Hackbarth, 228 Wis. 108, 279 N.W. 687 (1938).

An amendment to a statute making a material change bespeaks a legislative intent to change the meaning of the statute. People v. Mohammed, 162 Cal. App. 4th 920, 76 Cal. Rptr. 3d 372 (6th Dist. 2008); Bigelow Group, Inc. v. Rickert, 377 Ill. App. 3d 165, 315 Ill. Dec. 842, 877 N.E.2d 1171 (2d Dist. 2007).

Particularly when there is no definitive "clarifying" expression by the legislature in statutory amendments themselves, courts will presume that a substantial or material statutory change bespeaks legislative intention to change, and not just clarify, the law. Fonseca v. City of Gilroy, 148 Cal. App. 4th 1174, 56 Cal. Rptr. 3d 374 (6th Dist. 2007).

4 Lavin v. Lavin, 182 F.2d 870, 18 A.L.R.2d 1017 (2d Cir. 1950); Schram v. Keane, 279 N.Y. 227, 18 N.E.2d 136, 119 A.L.R. 1216 (1938).

5 U.S. v. McClure, 305 U.S. 472, 59 S. Ct. 335, 83 L. Ed. 296 (1939).

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V. Interpretation

J. Reenacted, Revised, Adopted, and Uniform Provisions

2. Revised Statutes and Codes

§ 215. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

A.L.R. Library

Legislative adoption of compiled or revised statutes as giving effect to former repealed or suspended provisions included therein, 12 A.L.R.2d 423.

In case of doubt and uncertainty as to the meaning of a provision of a compiled or revised statute, its true meaning may properly be ascertained by resort to the act from which the provision was derived,[1] and this rule is particularly applicable where the code is not subject to a fair construction without consideration of the original statute.[2] The presumption that obtains in the case of an amendment of a statute, that a departure from the law formerly existing is intended,[3] has little, if any, force in the case of a general revision or codification of the laws of a state.[4] A nonsubstantive codification ordinarily works no change in existing case law.[5] Indeed, it is a settled rule of construction that where the entire legislation affecting a particular subject matter has undergone revision and consolidation by codification, the revised sections will be presumed to bear the same meaning as the original sections,[6] notwithstanding that there is an alteration in phraseology[7] or an omission or addition of words,[8] for in such case, the new language may properly be attributed to a desire to condense and simplify the law[9] or to improve the phraseology.[10]

Where an intention to change the meaning of a statute incorporated in a revision or code is clear, the presumption that no change was intended must yield to the fact.[11]

It is a general rule in the construction of compilations, revisions, or codes that when a provision is plain and unambiguous, the court cannot refer to the original statute for the purpose of ascertaining its meaning.[12]

As in the case of statutory provisions generally,[13] the punctuation of a provision of a code or compilation is not a decisive or controlling element in its interpretation although where reliance is placed upon the punctuation of a provision in a code or compilation, the fact that the punctuation of the original act was different has been taken into consideration.[14]

Footnotes

1 Merchants' National Bank of Baltimore v. U.S., 214 U.S. 33, 29 S. Ct. 593, 53 L. Ed. 899 (1909); Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co., 606 N.W.2d 376 (Iowa 2000); State v. Conally, 227 S.C. 507, 88 S.E.2d 591 (1955).

2 State v. Conally, 227 S.C. 507, 88 S.E.2d 591 (1955); Lewis v. Annie Creek Min. Co., 74 S.D. 26, 48 N.W.2d 815 (1951).

3 § 123.

4 State v. Wibaux County Bank of Wibaux, 85 Mont. 532, 281 P. 341 (1929); Lewis v. Annie Creek Min. Co., 74 S.D. 26, 48 N.W.2d 815 (1951).

5 Russell v. Gaither, 181 Md. App. 25, 952 A.2d 1013 (2008).

6 U.S. v. Sischo, 262 U.S. 165, 43 S. Ct. 511, 67 L. Ed. 925 (1923); Vielma v. Eureka Co., 218 F.3d 458 (5th Cir. 2000); Government Employees Ins. Co. v. Hall, 260 Va. 349, 533 S.E.2d 615 (2000); Carl Miller Lumber Co. v. Federal Home Development Co., 231 Wis. 509, 286 N.W. 58, 122 A.L.R. 752 (1939).

7 Ahner v. Delaware Alcoholic Beverage Control Commission, 237 A.2d 706 (Del. 1967); Northridge v. Grenier, 278 Mass. 438, 180 N.E. 226, 81 A.L.R. 394 (1932).

8 U.S. v. Ryan, 284 U.S. 167, 52 S. Ct. 65, 76 L. Ed. 224 (1931); Waara v. Golden Turkey Min. Co., 60 Ariz. 252, 135 P.2d 149, 149 A.L.R. 677 (1943); Bassett v. City Bank & Trust Co., 115 Conn. 393, 161 A. 852 (1932).

9 McDonald v. Hovey, 110 U.S. 619, 4 S. Ct. 142, 28 L. Ed. 269 (1884); Bassett v. City Bank & Trust Co., 115 Conn. 393, 161 A. 852 (1932); State v. Conally, 227 S.C. 507, 88 S.E.2d 591 (1955).

10 State v. Conally, 227 S.C. 507, 88 S.E.2d 591 (1955); Lewis v. Annie Creek Min. Co., 74 S.D. 26, 48 N.W.2d 815 (1951).

11 Commonwealth v. New York Cent. & H.R.R. Co., 206 Mass. 417, 92 N.E. 766 (1910); State v. Minneapolis Milk Co., 124 Minn. 34, 144 N.W. 417 (1913); American Indem. Co. v. City of Austin, 112 Tex. 239, 246 S.W. 1019 (1922).

The Supreme Court ordinarily will not assume that Congress intended to enact statutory language that it has earlier discarded in favor of other language. Chickasaw Nation v. U.S., 534 U.S. 84, 122 S. Ct. 528, 151 L. Ed. 2d 474 (2001).

12 Barrett v. U.S., 169 U.S. 218, 18 S. Ct. 327, 42 L. Ed. 723 (1898); Schumacher v. Chapin, 228 S.C. 77, 88 S.E.2d 874 (1955); Sharp v. Cincinnati, N.O. & T.P. Ry. Co., 133 Tenn. 1, 179 S.W. 375 (1915); Dealers Elec. Supply Co. v. Scroggins Const. Co., Inc., 292 S.W.3d 650, 249 Ed. Law Rep. 457 (Tex. 2009).

13 § 132.

14 Hammock v. Farmers' Loan & Trust Co., 105 U.S. 77, 26 L. Ed. 1111, 1881 WL 19784 (1881).

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J. Reenacted, Revised, Adopted, and Uniform Provisions

2. Revised Statutes and Codes

§ 216. Classification and arrangement

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

The juxtaposition of statutory provisions as a result of rearrangements in codes, revisions, or compilations is not decisive in determinations as to the effect or application of such provisions.[1] Such rearrangements are not regarded as altering the construction of the statutes included in the compilation.[2]

Although there is authority for the rule that words defined in a prior statute are, prima facie, to be regarded as used in the same sense in a subsequent statute, there are also cases in which definitions of terms in one statute do not apply to the same terms used in later statutes.[3] Where the latter rule is applicable, definitions found in a code have been confined to those sections of the chapter which were contained in the act of which the definition clause was a part before the rearrangement of them by the code.[4]

Footnotes

1 Edwards v. Safeguard Ins. Co., 323 F. Supp. 2d 1263 (M.D. Fla. 2004) (applying Florida law); Ramsey v. Leeper, 1933 OK 661, 168 Okla. 43, 31 P.2d 852 (1933); Tillman v. Tillman, 84 S.C. 552, 66 S.E. 1049 (1910).

2 Hale v. Iowa State Board of Assessment and Review, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937); Doll v. Stahl, 79 N.D. 843, 59 N.W.2d 721, 41 A.L.R.2d 1317 (1953); State v. Conally, 227 S.C. 507, 88 S.E.2d 591 (1955).

3 § 139.

4 Warner v. Goltra, 293 U.S. 155, 55 S. Ct. 46, 79 L. Ed. 254 (1934).

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2. Revised Statutes and Codes

§ 217. Effect of titles and headings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

In construing a provision of a code or compilation, it is generally regarded as legitimate and proper to consider the title of the original act.[1] Chapter titles in codification of laws are entitled to consideration in construction of a code section included thereunder if the section is ambiguous or otherwise unclear.[2] Section headings within codified statutes may be helpful in construing an ambiguous statute.[3] Furthermore, the phraseology of a headnote or headline of a section of a statute generally may be considered.[4]

However, chapter headings[5] or section headings[6] inserted for convenience of reference by clerks or revisers, who have no legislative authority, cannot lessen or expand the meaning of the statutory provision.

Footnotes

1 Myer v. Western Car Co., 102 U.S. 1, 26 L. Ed. 59, 1880 WL 18727 (1880); Board of Public Instruction of Broward County v. State ex rel. Allen, 219 So. 2d 430 (Fla. 1969); Camden Fire Ins. Ass'n v. Harold E. Clayton & Co., 117 Tex. 414, 6 S.W.2d 1029 (1928).

2 Udgaard v. Schindler, 75 N.D. 625, 31 N.W.2d 776 (1948).

3 State v. Menuto, 912 So. 2d 603 (Fla. Dist. Ct. App. 2d Dist. 2005).

4 Cram v. Cram, 116 N.C. 288, 21 S.E. 197 (1895); State v. Crothers, 118 Wash. 226, 203 P. 74 (1922).

5 State v. Maurer, 255 Mo. 152, 164 S.W. 551 (1914); Olson v. City of Sioux Falls, 63 S.D. 563, 262 N.W. 85, 103 A.L.R. 1022 (1935).

6 State v. Maurer, 255 Mo. 152, 164 S.W. 551 (1914).

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§ 218. Notes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

The rule that in case of doubt or uncertainty as to the meaning of a provision of a code or of compiled or revised statutes, resort in ascertaining its true meaning may properly be had to the act from which the provision was derived[1] is especially applicable where the act authorizing the compilation or revision directs the making of marginal references to the acts incorporated therein.[2] However, reviser's notes are to be regarded as authoritative in interpreting the United States Code.[3]

Footnotes

1 § 215.

2 U.S. v. Lacher, 134 U.S. 624, 10 S. Ct. 625, 33 L. Ed. 1080 (1890).

3 U. S. ex rel. Almeida v. Baldi, 195 F.2d 815, 33 A.L.R.2d 1407 (3d Cir. 1952).

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§ 219. Work of revising commissioners

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

The announced object[1] or report of a legislative commission appointed for the purpose of investigating the laws generally, or the laws on a specified subject, and of recommending any desirable changes, may be taken into consideration for the purpose of determining the meaning of statutes submitted by them to and adopted by the legislature.[2] Such report, however, is not controlling, and the rule does not prevail where the language used in the statute is clear and unambiguous.[3]

Bills submitted to the legislature by the reviser of the statutes and enacted into law are acts of the legislature, and where there is no ambiguity, such acts must be applied as they read even though the reviser may have made a mistake or had in his or her notes indicated that there was no intention to work a change in the law.[4]

Footnotes

1 Wine v. Com., 301 Mass. 451, 17 N.E.2d 545, 120 A.L.R. 889 (1938).

2 United States v. Flores, 289 U.S. 137, 53 S. Ct. 580, 77 L. Ed. 1086 (1933); Com. v. Anderson, 272 Mass. 100, 172 N.E. 114, 69 A.L.R. 1097 (1930).

3 Tennant v. Kuhlemeier, 142 Iowa 241, 120 N.W. 689 (1909); Commonwealth v. New York Cent. & H.R.R. Co., 206 Mass. 417, 92 N.E. 766 (1910).

4 Dovi v. Dovi, 245 Wis. 50, 13 N.W.2d 585, 151 A.L.R. 1368 (1944).

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§ 220. Decisions of courts in earlier cases

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

It is a rule of construction of revised statutes and codes that if a section thereof has been codified from a judicial decision, it is to be construed in the light of the source from which it was taken unless the language imperatively demands a different construction.[1] Similarly, where a statute which has previously received a judicial construction is included in a code, it will be presumed that the intention was to adopt the construction given the statute by the court[2] where no purpose to make a substantial change in the law appears.[3] The rule has, however, been regarded as confined to well-settled constructions, and the fact that no change was made in the language of a statute in a revision and codification subsequent to a single decision of a lower court construing it cannot be considered as a legislative approval of the interpretation given.[4]

Footnotes

1 Calhoun v. Little, 106 Ga. 336, 32 S.E. 86 (1898).

2 Coleman v. Inland Gas Corporation, 231 Ky. 637, 21 S.W.2d 1030 (1929); Foster v. Curtis, 213 Mass. 79, 99 N.E. 961 (1912); Layton v. Flowers, 243 S.C. 421, 134 S.E.2d 247 (1964).

3 Foster v. Curtis, 213 Mass. 79, 99 N.E. 961 (1912).

4 U.S. v. Raynor, 302 U.S. 540, 58 S. Ct. 353, 82 L. Ed. 413 (1938).

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§ 221. Consideration of all provisions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

The general rule is that provisions of a code that are in pari materia must be construed together, and the construction of one, if doubtful, may be aided by a consideration of the words of, and the legislative intent indicated by, the others.[1] The basis of this rule is that all the provisions of a code, revision, or compilation are passed at the same time and constitute one act[2] and that provisions which are sometimes widely separated for convenience of analysis and classification of subjects have so immediate a connection that it is quite necessary to consider the one in order to arrive at the true exposition of the other.[3] The provisions of a code should be construed in harmony with the general purpose and intent of the code as a whole,[4] and to that end, the letter of any particular section may sometimes be disregarded in order to accomplish the plain intention of the legislature.[5] Code provisions relating to the same subject must be harmonized to the extent possible.[6] However, courts will not, in an effort to harmonize two sections of a code, adopt a construction that would frustrate the obvious purposes of the legislation as a whole or otherwise lead to absurd results.[7] A code must be read in its entirety and each section interpreted so as to correlate as faultlessly as possible with all other sections.[8] Thus, all parts of an article of a code,[9] chapters of the same statute,[10] and sections of the same chapter[11] should be construed together, at least where they are created by the same legislature at the same time.[12] It is especially true that code sections which were originally one act should be construed together.[13] In addition, where existing legislation on a particular subject has been systematically revised and restated in a comprehensive general statute, subsequent enactments touching on that subject are to be construed and applied in harmony with the general statute, save as they clearly manifest a different purpose.[14]

Where several codes are to be construed, they must be regarded as blending into each other and forming a single statute; thus, they must be read together and so construed as to give effect, when possible, to all the provisions thereof.[15]

The general rule is that where two inconsistent statutes are carried into the codified law, the one last passed, which is the later declaration of the legislative will, should prevail[16] regardless of the order in which they are placed in the compilation.[17]

CUMULATIVE SUPPLEMENT

Cases:

Statutes and codes blend into each other and are to be regarded as constituting but a single statute. People v. McGowan, 242 Cal. App. 4th 377, 2015 WL 7301341 (2d Dist. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Kidd v. Bates, 120 Ala. 79, 23 So. 735 (1898); Duncan v. National Tea Co., 14 Ill. App. 2d 280, 144 N.E.2d 771, 69 A.L.R.2d 546 (1st Dist. 1957); Hickson v. State, 196 Tenn. 659, 270 S.W.2d 313 (1954).
As to the doctrine of pari materia, generally, see § 95

2 Central of Georgia Ry. Co. v. State, 104 Ga. 831, 31 S.E. 531 (1898); State v. Frederickson, 101 Me. 37, 63 A. 535 (1905).

3 State v. Frederickson, 101 Me. 37, 63 A. 535 (1905).

4 Johnson v. Moon, 3 Ill. 2d 561, 121 N.E.2d 774, 46 A.L.R.2d 1246 (1954); State v. Valeu, 257 Iowa 867, 134 N.W.2d 911 (1965); In re Cloward's Estate, 95 Utah 453, 82 P.2d 336, 119 A.L.R. 123 (1938).

5 Iglehart v. Iglehart, 204 U.S. 478, 27 S. Ct. 329, 51 L. Ed. 575 (1907).

6 Board of Retirement of Kern County Employees' Retirement Ass'n v. Bellino, 126 Cal. App. 4th 781, 24 Cal. Rptr. 3d 384 (5th Dist. 2005).

7 Board of Retirement of Kern County Employees' Retirement Ass'n v. Bellino, 126 Cal. App. 4th 781, 24 Cal. Rptr. 3d 384 (5th Dist. 2005).

8 State v. Steven B., 136 N.M. 111, 2004-NMCA-086, 94 P.3d 854 (Ct. App. 2004).

9 Weinberg v. Safe Deposit & Trust Co. of Baltimore, 198 Md. 539, 85 A.2d 50, 37 A.L.R.2d 188 (1951).

10 State v. Valeu, 257 Iowa 867, 134 N.W.2d 911 (1965); State v. Frederickson, 101 Me. 37, 63 A. 535 (1905).

11 Automatic Voting Mach. Corp. v. Maricopa County, 50 Ariz. 211, 70 P.2d 447, 116 A.L.R. 320 (1937); Theofanis v. Sarrafi, 339 Ill. App. 3d 460, 274 Ill. Dec. 242, 791 N.E.2d 38 (1st Dist. 2003); State v. Valeu, 257 Iowa 867, 134 N.W.2d 911 (1965).

12 State v. Valeu, 257 Iowa 867, 134 N.W.2d 911 (1965); Brookshire v. Burkhart, 1929 OK 428, 141 Okla. 1, 283 P. 571, 67 A.L.R. 1059 (1929).

13 Nashville & American Trust Co. v. Baxter, 171 Tenn. 494, 105 S.W.2d 108, 114 A.L.R. 451 (1937).

14 Panama R. Co. v. Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924).

15 Katz v. Los Gatos-Saratoga Joint Union High School Dist., 117 Cal. App. 4th 47, 11 Cal. Rptr. 3d 546, 186 Ed. Law Rep. 916 (6th Dist. 2004).

16 Adkins v. Arnold, 235 U.S. 417, 35 S. Ct. 118, 59 L. Ed. 294 (1914).

17 Hillsborough County Com'rs v. Jackson, 58 Fla. 210, 50 So. 423 (1909); Cram v. Inhabitants of Cumberland County, 148 Me. 515, 96 A.2d 839 (1953); In re Initiative Petition No. 249, 1950 OK 238, 203 Okla. 438, 222 P.2d 1032 (1950).

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§ 222. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

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Comment Note.—Presumption as to law of foreign countries, 75 A.L.R.2d 529

Trial Strategy

Law of Foreign Jurisdiction, 21 Am. Jur. Proof of Facts 2d 1

In the case of a statute adopted from another jurisdiction, the legislature may be presumed to have been familiar with decisions of the courts of the foreign jurisdiction having a bearing on the operation of the statute,[1] and in the absence of an expression of legislative intention to the contrary,[2] to have adopted the statute in view of the construction put upon it by the courts of such jurisdiction and with the intention that the adopted statute should receive the same interpretation.[3] Indeed, it is the well-settled rule that when a statute is adopted from another state or country, the judicial construction already placed on such statute by the highest courts of the jurisdiction from which it is taken is treated as incorporated therein so as to govern its interpretation.[4]

When a legislature's enactment departs from the language of a model act, it usually does so to express an intention different from the model act; but this approach is primarily relevant when the legislature is working in a vacuum, building first principles in an area of the law.[5]

Footnotes

1 Shaw v. U.S. Fidelity & Guaranty Co., 48 S.W.2d 974, 83 A.L.R. 1113 (Tex. Comm'n App. 1932).

2 Riddle v. Fairforest Finishing Co., 198 S.C. 419, 18 S.E.2d 341 (1942).

3 Shannon v. U.S., 512 U.S. 573, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994); Baker v. Ploetz, 616 N.W.2d 263 (Minn. 2000); Sudbury v. Deterding, 2001 OK 10, 19 P.3d 856 (Okla. 2001).
As to the construction of statutes by foreign courts, generally, see §§ 79, 80.

4 Marlin v. Lewallen, 276 U.S. 58, 48 S. Ct. 248, 72 L. Ed. 467 (1928); Baker v. Ploetz, 616 N.W.2d 263 (Minn. 2000); Sudbury v. Deterding, 2001 OK 10, 19 P.3d 856 (Okla. 2001).

5 Members Choice Credit Union v. Home Federal Savings and Loan Ass'n, 323 S.W.3d 658 (Ky. 2010).

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§ 223. Extent and limitations of adherence to foreign construction

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West's Key Number Digest

West's Key Number Digest, Statutes 231

The presumption and general rule that the adoption of a foreign statute carries with it the prior construction in the originating state are regarded as of special force,[1] and persuasive,[2] and entitled to great weight[3] and respectful consideration,[4] so that only strong reasons will warrant a departure from such construction.[5] It is, however, by no means absolute, mandatory, or controlling or imperative on the courts of the adopting state.[6] Furthermore, the courts of a state adopting a statute are not bound by the construction placed thereon by other states which had adopted it.[7]

The rule that adoption of the wording of a statute from another legislative jurisdiction carries with it the previous judicial interpretations of the wording rests on a presumption of legislative intention which varies in strength with the similarity of the language, the established character of the decisions in the jurisdiction from which the language was adopted, and the presence or lack of other indicia of intention.[8] Moreover, the rule is applicable only where the terms of the statute are of doubtful import so as to require construction.[9] The rule has also been declared inapplicable where the statute is not taken verbatim or in toto,[10] or where radical or material changes are made therein;[11] where the statute had been materially changed by amendment after the decisions construing it and before adoption,[12] where the statute is given a different setting in the adopting state;[13] where the construction of the foreign state would render the statute inconsistent with other laws intended to be retained;[14] where the foreign construction is not in harmony with the constitution of the adopting state,[15] or its procedural and substantive laws,[16] or would lead to a denial of a substantial right, or is contrary to the spirit and policy of the jurisprudence of the adopting state;[17] or where the courts of the adopting state are clearly of the opinion that the foreign construction is erroneous.[18] Moreover, the rule is applicable only to the question of construction.[19] It does not apply to the question of the statute's constitutionality.[20]

CUMULATIVE SUPPLEMENT

Cases:

Where a foreign statute has been interpreted by courts of the state of its origin, such interpretation should be followed in other states where the statute is applied. Corvel Corporation v. Homeland Insurance Company of New York, 112 A.3d 863 (Del. 2015).

If the Oregon legislature adopts a statute or rule from another jurisdiction's legislation, when interpreting the statute, courts assume that the Oregon legislature also intended to adopt the construction of the legislation that the highest court of the other jurisdiction had rendered before adoption of the legislation in Oregon. State v. Guzman, 366 Or. 18, 455 P.3d 485 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Hill v. Moskin Stores, Inc., 52 Del. 424, 159 A.2d 299 (Super. Ct. 1960), judgment aff'd, 53 Del. 117, 165 A.2d 447 (1960); Doherty's Case, 294 Mass. 363, 2 N.E.2d 186, 105 A.L.R. 576 (1936).

2 Griffin v. Irwin, 246 Ala. 631, 21 So. 2d 668, 158 A.L.R. 288 (1945); Tax Commission v. Lamprecht, 107 Ohio St. 535, 1 Ohio L. Abs. 404, 140 N.E. 333, 31 A.L.R. 985 (1923); Basham v. R.H. Lowe, Inc., 176 Va. 485, 11 S.E.2d 638, 131 A.L.R. 761 (1940).

3 Hill v. Moskin Stores, Inc., 52 Del. 424, 159 A.2d 299 (Super. Ct. 1960), judgment aff'd, 53 Del. 117, 165 A.2d 447 (1960); Lasier v. Wright, 304 Ill. 130, 136 N.E. 545, 28 A.L.R. 674 (1922).

4 Hill v. Moskin Stores, Inc., 52 Del. 424, 159 A.2d 299 (Super. Ct. 1960), judgment aff'd, 53 Del. 117, 165 A.2d 447 (1960); Ancient Order of Hibernians, Division No. 1, of Anaconda, v. Sparrow, 29 Mont. 132, 74 P. 197 (1903).

5 Ancient Order of Hibernians, Division No. 1, of Anaconda, v. Sparrow, 29 Mont. 132, 74 P. 197 (1903).

6 Evans-Snider-Buel Co. v. McFadden, 105 F. 293 (8th Cir. 1900), aff'd, 185 U.S. 505, 22 S. Ct. 758, 46 L. Ed. 1012 (1902); In re Klug's Estate, 251 Iowa 1128, 104 N.W.2d 600 (1960); McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934).

7 Hubbard v. State, 163 N.W.2d 904 (Iowa 1969).
As to conflicting constructions of a statute which has been adopted by more than one state, see § 225.

8 Carolene Products Co. v. U.S., 323 U.S. 18, 65 S. Ct. 1, 89 L. Ed. 15, 155 A.L.R. 1371 (1944).

9 Lewis v. Pawnee Bill's Wild West Co., 22 Del. 316, 6 Penne. 316, 66 A. 471 (1907); Nind v. Myers, 15 N.D. 400, 109 N.W. 335 (1906); McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934).

10 State v. Reed, 39 N.M. 44, 39 P.2d 1005, 102 A.L.R. 995 (1934).

11 Copper Queen Consol. Min. Co. v. Territorial Board of Equalization of Territory of Arizona, 206 U.S. 474, 27 S. Ct. 695, 51 L. Ed. 1143 (1907); White v. White, 196 Ark. 29, 116 S.W.2d 616 (1938); McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934).

12 Sekinoff v. U S, 283 F. 38, 5 Alaska Fed. 130 (C.C.A. 9th Cir. 1922); Hutchinson v. Krueger, 1912 OK 368, 34 Okla. 23, 124 P. 591 (1912).

13 State v. Reed, 39 N.M. 44, 39 P.2d 1005, 102 A.L.R. 995 (1934).

14 Liquidation of Canal Bank & Trust Co., 211 La. 803, 30 So. 2d 841 (1947); Geraghty v. National Bank of Commerce of Seattle, 8 Wash. 2d 439, 112 P.2d 846, 134 A.L.R. 531 (1941).

15 McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934); Hutchinson v. Krueger, 1912 OK 368, 34 Okla. 23, 124 P. 591 (1912); Paragon Oil Syndicate v. Rhoades Drilling Co., 115 Tex. 149, 277 S.W. 1036 (Comm'n App. 1925).

16 Liquidation of Canal Bank & Trust Co., 211 La. 803, 30 So. 2d 841 (1947).

17 White v. White, 196 Ark. 29, 116 S.W.2d 616 (1938); McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934).

18 Whitney v. Fox, 166 U.S. 637, 17 S. Ct. 713, 41 L. Ed. 1145 (1897).

19 City of Reno v. Second Judicial District Court in and for Washoe County, 59 Nev. 416, 95 P.2d 994, 125 A.L.R. 948 (1939).

20 City of Reno v. Second Judicial District Court in and for Washoe County, 59 Nev. 416, 95 P.2d 994, 125 A.L.R. 948 (1939); Boyd v. C.L. Ritter Lumber Co., 119 Va. 348, 89 S.E. 273 (1916).

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§ 224. Extent and limitations of adherence to foreign construction—Decisions rendered subsequently to adoption

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West's Key Number Digest

West's Key Number Digest, Statutes 231

Manifestly, the interpretation of an adopted statute by decisions subsequent to that of the adoption cannot have been adopted with the statute.[1] The adoption is accordingly not presumed to carry such construction,[2] which is not binding upon the courts of the adopting state.[3] The later decisions have, however, been regarded as entitled to consideration[4] and have even been regarded as persuasive as to the interpretation which should be given to the statute by the courts of the adopting state.[5] Where a state statute is patterned after a federal statute, the decisions of the United States Supreme Court and inferior federal courts interpreting the parent federal statute are, even though they were handed down after the adoption by the state of the federal statute, most persuasive, particularly where such interpretations are the only ones extant with respect to the disputed words of the state statute.[6]

Footnotes

1 Mundey v. Unsatisfied Claim and Judgment Fund Bd., 233 Md. 169, 195 A.2d 720, 2 A.L.R.3d 755 (1963); Tuttle v. Union Bank & Trust Co., 112 Mont. 568, 119 P.2d 884, 139 A.L.R. 127 (1941); Pittsburgh, C., C. & St. L.R. Co. v. Naylor, 73 Ohio St. 115, 76 N.E. 505 (1905).

2 Panama R. Co. v. Rock, 266 U.S. 209, 45 S. Ct. 58, 69 L. Ed. 250 (1924); Heckman v. Heckman, 245 A.2d 550, 35 A.L.R.3d 1234 (Del. 1968).

3 Stutsman County v. Wallace, 142 U.S. 293, 12 S. Ct. 227, 35 L. Ed. 1018 (1892); In re Klug's Estate, 251 Iowa 1128, 104 N.W.2d 600 (1960).

4 Andrews v. Franchise Tax Bd., 275 Cal. App. 2d 653, 80 Cal. Rptr. 403 (3d Dist. 1969).

5 Hubbard v. State, 163 N.W.2d 904 (Iowa 1969); Burnside v. Wand, 170 Mo. 531, 71 S.W. 337 (1902).

6 State v. Taylor, 82 Ariz. 289, 312 P.2d 162 (1957).

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V. Interpretation

J. Reenacted, Revised, Adopted, and Uniform Provisions

3. Adopted Statutes

§ 225. Extent and limitations of adherence to foreign construction—Conflicting constructions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 231

Although a statute of one state is adopted in another state, the courts of the latter state are not bound by the construction placed upon the statute in the former state if the statute is not peculiar to that state alone and other states have adopted it and their courts have placed a different construction upon it.[1] However, where a statute construed in the state where it was enacted is adopted by another state, where it receives a different construction, and is then borrowed from the latter by a third state, the original construction may be followed in preference to the different one.[2] Similarly, if it is uncertain from which of two states the last enactment was taken, there can be no objection to the adoption of the decisions in the state where it was first enacted.[3]

Footnotes

1 Hutchinson v. Krueger, 1912 OK 368, 34 Okla. 23, 124 P. 591 (1912); Paragon Oil Syndicate v. Rhoades Drilling Co., 115 Tex. 149, 277 S.W. 1036 (Comm'n App. 1925).

2 Coulam v. Doull, 133 U.S. 216, 10 S. Ct. 253, 33 L. Ed. 596 (1890).

3 Texas & P. Ry. Co. v. Humble, 181 U.S. 57, 21 S. Ct. 526, 45 L. Ed. 747 (1901).

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§ 226. Statutes adopted from particular sources

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West's Key Number Digest

West's Key Number Digest, Statutes 231

The general rule that where a statute is adopted from another state or country, the judicial construction already placed on such statute by the highest courts of the jurisdiction from which it is taken is treated as incorporated therein so as to govern its interpretation is applicable where the legislature of a state adopts a federal statute or a portion thereof which had previously been construed by the Supreme Court of the United States.[1] The same rule applies where a state statute is adopted by a territorial legislature,[2] or by Congress,[3] or is imposed by Congress on a United States territory.[4] On the other hand, there is authority for the view that the interpretations of federal courts are neither conclusive nor compulsory, especially where it appears that earlier statutes substantially similar have also been enacted in other states.[5]

Footnotes

1 Goodrow v. Lane Bryant, Inc., 432 Mass. 165, 732 N.E.2d 289 (2000); Geraghty v. National Bank of Commerce of Seattle, 8 Wash. 2d 439, 112 P.2d 846, 134 A.L.R. 531 (1941).

2 James v. Appel, 192 U.S. 129, 24 S. Ct. 222, 48 L. Ed. 377 (1904); Harness v. Myers, 1930 OK 61, 143 Okla. 147, 288 P. 285 (1930).

3 Capital Traction Co. v. Hof, 174 U.S. 1, 19 S. Ct. 580, 43 L. Ed. 873 (1899); Harness v. Myers, 1930 OK 61, 143 Okla. 147, 288 P. 285 (1930).

4 Marlin v. Lewallen, 276 U.S. 58, 48 S. Ct. 248, 72 L. Ed. 467 (1928); Harness v. Myers, 1930 OK 61, 143 Okla. 147, 288 P. 285 (1930).

5 Hubbard v. State, 163 N.W.2d 904 (Iowa 1969).

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4. Uniform State Laws

§ 227. Generally

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West's Key Number Digest

West's Key Number Digest, Statutes 231

A uniform law which is remedial in nature should be liberally construed.[1] As in the case of other statutes, a uniform state law is to be construed as a whole,[2] effect being given, if possible, to all its provisions.[3] It is also a general rule of construction of uniform state laws that the words thereof are to be given their natural and common meaning.[4]

In construing a statute modeled after a uniform law, it is pertinent to resort to the holdings in other jurisdictions where the act is in force.[5]

Observation:

Under the Uniform Statute and Rule Construction Act, a statute that is intended to be uniform with those of other states is construed to effectuate that purpose with respect to the subject of the statute.[6]

Footnotes

1 State of Ill. ex rel. Shannon v. Sterling, 248 Minn. 266, 80 N.W.2d 13 (1956); Page v. Ford, 65 Or. 450, 131 P. 1013 (1913); Com. ex rel. Shaffer v. Shaffer, 175 Pa. Super. 100, 103 A.2d 430, 42 A.L.R.2d 761 (1954).

2 Tipton v. Woodbury, 616 F.2d 170, 28 U.C.C. Rep. Serv. 1473 (5th Cir. 1980); Street v. Commercial Credit Co., 35 Ariz. 479, 281 P. 46, 67 A.L.R. 1549 (1929); Martin v. General Am. Cas. Co., 226 La. 481, 76 So. 2d 537, 46 A.L.R.2d 1178 (1954).

3 Street v. Commercial Credit Co., 35 Ariz. 479, 281 P. 46, 67 A.L.R. 1549 (1929).

4 Lowell Co-op. Bank v. Sheridan, 284 Mass. 594, 188 N.E. 636, 91 A.L.R. 1176 (1934); Peter v. Finzer, 116 Neb. 380, 217 N.W. 612, 65 A.L.R. 1419 (1928).

5 State v. Mancuso, 652 So. 2d 370 (Fla. 1995).

6 Unif. Statute and Rule Construction Act § 18(b).

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§ 228. Purpose

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West's Key Number Digest

West's Key Number Digest, Statutes 231

Uniform state laws are to be construed with reference to the objects sought to be obtained.[1] An extension of the provisions of the act beyond the field of its purpose is not warranted.[2] The object of uniform state laws is to provide, as far as possible, a uniform law on the subject involved that would be common to all the states adopting it,[3] and this object should be considered in the interpretation of such laws[4] in order to effectuate such purpose.[5] Accordingly, the rule that if the statute of a foreign state or the federal government is similar to that of the forum, decisions of courts of such state or government may be helpful in construing the latter[6] is particularly applicable in regard to statutes enacted for the purpose of obtaining uniformity of law on the subject among the several states.[7] It is nevertheless recognized that decisions as to the proper construction of uniform state laws will not be entirely uniform.[8]

Footnotes

1 Tipton v. Woodbury, 616 F.2d 170, 28 U.C.C. Rep. Serv. 1473 (5th Cir. 1980); National City Bank of Chicago v. National Bank of the Republic of Chicago, 300 Ill. 103, 132 N.E. 832, 22 A.L.R. 1153 (1921).

2 Brindley v. Meara, 209 Ind. 144, 198 N.E. 301, 101 A.L.R. 682 (1935).

3 § 16.

4 National City Bank of Chicago v. National Bank of the Republic of Chicago, 300 Ill. 103, 132 N.E. 832, 22 A.L.R. 1153 (1921); Herington Livestock Auction Co. v. Verschoor, 179 N.W.2d 491, 8 U.C.C. Rep. Serv. 83 (Iowa 1970); Corbin Deposit Bank v. King, 384 S.W.2d 302, 2 U.C.C. Rep. Serv. 441 (Ky. 1964).

5 Union Trust Co. v. McGinty, 212 Mass. 205, 98 N.E. 679 (1912); In re Estate of Karnen, 2000 SD 32, 607 N.W.2d 32 (S.D. 2000); Town of Manchester v. Town of Townshend, 109 Vt. 65, 192 A. 22, 110 A.L.R. 811 (1937).

6 § 79.

7 State v. Weissman, 73 N.J. Super. 274, 179 A.2d 748, 93 A.L.R.2d 1001 (App. Div. 1962); Richards v. Market Exch. Bank Co., 81 Ohio St. 348, 90 N.E. 1000 (1910); Colley v. Summers Parrott Hardware Co., 119 Va. 439, 89 S.E. 906 (1916).

8 Holliday State Bank v. Hoffman, 85 Kan. 71, 116 P. 239 (1911).

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4. Uniform State Laws

§ 229. Previous state law

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West's Key Number Digest

West's Key Number Digest, Statutes 231

In the interpretation of a uniform act, care should be taken to adhere as closely as possible to the obvious meaning of the act without resort to that which had theretofore been the law of the state,[1] especially in instances where there was a difference in the law in the various states.[2] In this respect, only decisions applying and interpreting the uniform act under consideration are entitled to much weight.[3] However, if a doubt in regard to the meaning of the act can be solved by a reference to the law previously administered, this law should be looked to.[4] Moreover, the act, if practicable, should be given such a construction as will make it harmonize with the general principles of law in force before its enactment.[5]

Observation:

The Uniform Statute and Rule Construction Act applies to a statute enacted before, on, or after the effective date of the Act unless the statute expressly provides otherwise, the context of its language requires otherwise, or the application of the Act to the statute would be infeasible.[6]

Footnotes

1 City of New Port Richey v. Fidelity & Deposit Co. of Maryland, 105 F.2d 348, 123 A.L.R. 1352 (C.C.A. 5th Cir. 1939); Northridge v. Grenier, 278 Mass. 438, 180 N.E. 226, 81 A.L.R. 394 (1932).

2 Mechanics' & Farmers' Sav. Bank v. Katterjohn, 137 Ky. 427, 125 S.W. 1071 (1910); Union Trust Co. v. McGinty, 212 Mass. 205, 98 N.E. 679 (1912); Peter v. Finzer, 116 Neb. 380, 217 N.W. 612, 65 A.L.R. 1419 (1928).

3 Gannon v. Bronston, 246 Ky. 612, 55 S.W.2d 358, 86 A.L.R. 324 (1932); Harris v. Esterbrook, 55 S.D. 538, 226 N.W. 751, 70 A.L.R. 241 (1929).

4 Northridge v. Grenier, 278 Mass. 438, 180 N.E. 226, 81 A.L.R. 394 (1932).

5 National City Bank of Chicago v. National Bank of the Republic of Chicago, 300 Ill. 103, 132 N.E. 832, 22 A.L.R. 1153 (1921); Johnston v. Knipe, 260 Pa. 504, 105 A. 705 (1918); Strother v. Lynchburg Trust & Sav. Bank, 155 Va. 826, 156 S.E. 426, 73 A.L.R. 166 (1931).

6 Unif. Statute and Rule Construction Act § 1(a).

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§ 230. Reports of legislative and drafting committees

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West's Key Number Digest

West's Key Number Digest, Statutes 231

In the interpretation of a provision of a uniform state law which is ambiguous, recourse may be had to reports of congressional committees, notes of the commissioners on uniform legislation who drafted the law,[1] and publications of the American Law Institute.[2] Indeed, in order to secure uniformity in the construction of an act drafted by a Commission on Uniform Laws, the meaning of which is not clear, the intention of those who drafted it, if ascertainable, should be given controlling consideration.[3]

Footnotes

1 Colby v. Riggs Nat. Bank, 92 F.2d 183, 114 A.L.R. 1065 (App. D.C. 1937).

2 Straus v. Straus, 254 Minn. 234, 94 N.W.2d 679 (1959) (disapproved of on other grounds by, Cooper v. Isaacs, 448 F.2d 1202 (D.C. Cir. 1971)).

3 People's Sav. & Trust Co. v. Munsert, 212 Wis. 449, 250 N.W. 385, 88 A.L.R. 1306 (1933).

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